(1)

Supreme Court, U.S.
FILED

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN DAVID FOX,

Petitioner,

vs.

THE STATE OF FLORIDA and THE FLORIDA BAR,

Respondents.

ON PETITION FOR CERTIORARI TO THE
FLORIDA SUPREME COURT

PETITIONER FOR WRIT OF CERTIORARI

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232 pp

STATEMENT OF ISSUES

The estranged husband of the Petitioner's client filed a complaint with the STATE, but the client refused to make any complaint. The Petitioner resisted STATE prosecutor subpoenas upon the ground of attorney client privilege. Ignoring the privilege on January 20, 1998, at a hearing, which was not supposed to be ex parte the STATE's prosecutor obtained a charge of probable cause to take the license of the Petitioner. The questions for this Court are:

1.) WHETHER THE PETITIONER WAS DENIED FUNDAMENTAL DUE PROCESS BY THE TAKING OF HIS LICENSE UPON AN *EX PARTE* HEARING ON **JANUARY 20, 1998**, WHICH WAS NOT SUPPOSED TO BE *EX PARTE*, WHERE IT WAS UNDISPUTED THAT THE PETITIONER WAS REQUIRED BY FLORIDA STANDARDS OF PROFESSIONAL CONDUCT TO ATTEND A FEDERAL ARBITRATION HEARING; AND WHEN THE SAME HEARING WAS CONDUCTED ON **FEBRUARY 29, 2000** AND THE PETITIONER APPEARED AND DEFENDED AGAINST THE TAKING OF HIS LIVELIHOOD, THE STATE'S COMMITTEE FOUND NO PROBABLE CAUSE AND REFUSED TO PROCEED.

2.) MAY THE STATE CIRCUMVENT ATTORNEY-CLIENT CONFIDENTIALITY BY FORCING THE PETITIONER TO CHOSE BETWEEN DEFENDING AGAINST A [FRIVOLOUS] ACCUSATION AGAINST HIS LICENSE VERSUS PUBLIC DISCLOSURE OF ATTORNEY/CLIENT CONFIDENCES?

3.) MAY THE STATE PROSECUTOR DISREGARD THE ATTORNEY/CLIENT RELATIONSHIP AND COERCE THE CLIENT INTO MAKING A COMPLAINT AND TO CIRCUMVENT ATTORNEY/CLIENT CONFIDENCES, WHERE THE CLIENT REFUSES AND THE PETITIONER STILL REPRESENTS THE CLIENT?

4.) MAY THE STATE USE ITS *PUBLIC INTEREST* POLICY AND PRACTICE IN PROSECUTIONS OF ATTORNEYS TO DISREGARD THE ATTORNEY/CLIENT PRIVILEGE AND THE ATTORNEY CLIENT RELATIONSHIP?

5.) IS THE ATTORNEY/CLIENT PRIVILEGE GOOD CAUSE FOR NOT DISCLOSING A CLIENT'S CONFIDENCES AND THE DEFENSE/RESPONSE TO A FRIVOLOUS CLAIM?

6.) ARE ATTORNEYS AS CITIZENS ENTITLED TO FUNDAMENTAL DUE PROCESS AND EQUAL PROTECTION AND SHOULD THIS COURT REQUIRE EQUAL PROTECTION AND FUNDAMENTAL DUE PROCESS FOR ATTORNEY/CITIZENS?

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OPINIONS BELOW

The opinion of the Florida Supreme Court dated November 24, 1999 based upon the Florida 11th Circuit Grievance Committee finding of probable cause on January 20, 1998 to suspend the law license of the Petitioner is contained in the Appendix at A3-A4 and will be reported in West's Southern Reporter System.

The opinion of the same Florida 11th Circuit Grievance Committee issued on February 29, 2000 finding no probable cause to suspend the law license of the Petitoner is contained in the Appendix at A189-A190 and will not be reported by an official reporter.

JURISDICTION

On November 24, 2000 the Florida Supreme Court issued its opinion affirming the report of the Referee based upon the finding of probable cause by the Grievance Committee on January 20, 1998. A3-A4.

On February 22, 2000 the Florida Supreme Court denied the Petitioner's Motion for Rehearing; Motion to Proceed in Camera; and Motion for a Stay Pending Review in the U.S. Supreme Court. A179.

This Court has jurisdiction upon the Florida Supreme Court's per curiam opinion under the due process clause of the Fourteenth Amendment; upon the **egregious** disregard for the Attorney/client privilege; upon the **reckless** abuse of the attorney/client relationship; and as the federal Court of last resort. **See**, **e.g.**, Florida v. Rodriguez, 461 U.S. 940, 103 S.Ct. 2115, 77 L.Ed.2d 1298 (1983).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The due process clause of the Fourteenth Amendment to the United States Constitution provides that:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 501 Federal Rules of Evidence provides, *inter alia*, that:

> [T]he privilege of a witness ... shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience.

The Resolution of the Florida Federal-State Council Regarding Calendar Conflicts between State and Federal Courts is reported at A39-A40.

Rule 5-1.2(f) Florida Trust Accounting Records and Procedures provides *inter alia*, that:

> Members of the bar . . . may not assert any privilege personal to the lawyer that may be applicable to the Production of [records] in these disciplinary proceedings.
>
> * * *
>
> Notice of non-compliance with a subpoena may be filed with the Supreme Court of Florida only if a grievance committee or referee shall hear the issue of noncompliance and find that no good cause exists for failure to comply. . .

STATEMENT OF THE PROCEEDINGS

THE COMPLAINT:

On or about September 10, 1996 the undersigned attorney (hereinafter your PETITIONER) received a complaint by JON SERBIN filed in the Florida 11th Judicial Circuit of the Respondents, THE FLORIDA BAR and THE STATE OF FLORIDA [hereinafter the STATE]. A7-A9. Accompanying said complaint was a letter from the prosecutor, requesting your Petitioner's response said complaint to see if the matter should even be referred to the 11th Circuit Grievance Committee. A10-A11.

Jon Serbin's complaint was that your Petitioner had kept about $18,000, in Petitioner's trust account since May 1993 without authorization. See, A7-A9; A80-A93 (Verified letter to prosecutor). Jon Serbin claimed that the Petitioner was doing legal work for LINDA SERBIN without a contract since 1993. See, A57 (Jon Serbin's testimony). Jon Serbin and Linda Serbin graduated from Harvard and Jon Serbin has an MBA from Harvard.

RESPONSE TO JON SERBIN'S COMPLAINT:

The Petitioner's response on February 29, 2000, if it could have been made in September 1996, demonstrated that Jon Serbin's complaint was frivolous and would have closed this matter in September 1996 with no further action against the Petitioner and without referral to a Grievance Committee. See, A189-A190 (no probable cause finding); A80-A93 (Verified letter to prosecutor); A182-A188 (contract for Linda Serbin). At the February 29, 2000 hearing the Grievance Committee

learned that JON SERBIN, was the estranged husband of LINDA SERBIN, who had consulted with your Petitioner for a divorce from JON SERBIN and because of criminal acts by JON SERBIN and herself for JON SERBIN's serial rapes of LINDA SERBIN's minor daughter and other crimes. See, A182-A188. At all times material to the complaint, LINDA SERBIN was the only client of your Petitioner. See,*id.*; A60; A80-A93.

Relative to this Petition, in response to the complaint of JON SERBIN and throughout the STATE's proceedings, prior to February 29, 2000, your Petitioner reiterated, a.) that he would be glad to cooperate and offered to present all documents *in camera*, but b.) that Linda Serbin had never made any complaint and did not wish to; c.) that Jon Serbin was not the client of your Petitioner; and d.) that in order to defend against the complaint of Jon Serbin to show it was groundless, your Petitioner would have to disclose the extreme confidences of Linda Serbin exposing her to ridicule and scorn in the community and prosecution in state and federal proceedings and making the Petitioner a witness against his own client. See, A90-A93 (Verified July 20 1998 letter to prosecutor);A104; A107-A109 (Petitioner's statements); A12; A13-A14 (October and November 1996 replies); A19-A23 (May 1997) A26-A32 (Oct.1997 Motion);A64-A77 (March 1998 Response); A131-A141 (Sept.1998 Verified Motion); A144-A153 (Oct.1998 Petition): A154-A165 (Brief); A166-A174 (In Camera motion).

STATE'S OVERRIDING PUBLIC INTEREST POLICY:

The STATE prosecutors' response throughout the proceedings below to the

claim of attorney/client privilege and to the assertion of your Petitioner's fundamental rights, was to recklessly disregard these claims, predicated upon Florida's overriding policy and practice of *public interest* in disclosure in prosecutions of attorneys, which the STATE contends overrides the attorney/client privilege or any *applicable rights* the attorney may have. **See**, **e.g.**, Rule 5-1.2(f)(1)Fla.R.TrustAcct.; A164; A15-A16. Thus, instead of demonstrating any concern for the attorney/client privilege, the prosecutor tried to coerce your PETITIONER into defending the frivolous claim against his license by giving up LINDA SERBIN's attorney/client confidences.**See, e.g.**, A15-A16; A164 (Reply to State); A17-A18 (punitive subpoena); A25 (punitive subpoena);A33-A34 (notice);A5-A6 (notice).

17TH CIRCUIT PUNITIVE SUBPOENA:

In April 1997, five (5) months after receiving the Petitioner's letters; without any further information, nor explanation, this cause was transferred by the STATE prosecutor to the STATE's 17th Circuit. **See**, A17-A18; A24. Under Rule 5-1.2(d)(7) Florida Trust Accounting Rules the STATE's 17th Circuit prosecutor caused a **punitive subpoena** against the Petitioner to be served upon the Petitioner in a public manner **at his employer**, Tutor Time Child Care Systems, for all client records although no clients of your Petitioner had ever made any such complaint. **See**, *id.*; A19-A20, para. 2.

PETITIONER'S IN CAMERA REQUEST:

In response to said punitive subpoena, your Petitioner filed a Response; Motion

for Clarification; and Motion for Protective Order, continuing to indicate the foregoing reasons for his inability to defend what remained as Jon Serbin's complaint and his willingness to cooperate and provide *in camera* review, but reiterated that his **absolute defense** to Jon Serbin's Complaint must be conditioned upon his client, Linda Serbin, waiving her attorney client privilege, which she had not done and specifically declined to do so and LINDA SERBIN had no complaint against the undersigned. **See**, A19-A23. After receiving said response and motions the 17th Circuit Grievance Committee refused or failed to proceed against the undersigned. **See**, A24. On June 19, 1997 the STATE's prosecutor in the 17th Circuit closed her file and notified the STATE's 11th Circuit prosecutor of that decision. **See**, A24.

11TH CIRCUIT PUNITIVE SUBPOENA:

On September 22, 1997, with reckless indifference to the claim of attorney/client confidentiality and without any further information nor explanation, the STATE's 11th Circuit prosecutor again caused the same **punitive subpoena**, which the 17th Circuit had issued to be served upon the Petitioner in a great public manner **at his employer**, Tutor Time Child Care Systems. A25.

PETITIONER'S IN CAMERA REQUEST:

Again, in response to said punitive subpoena, your Petitioner filed the foregoing Response; Motion for Clarification; and Motion for a Protective Order. **See**, A26-A32. Additionally, your Petitioner complained that since the 17th

Circuit Committee had declined to proceed, this matter was barred as a matter of due process under Mabie v. Garden Street Management Company, 397 So.2d 920 (Fla. 1981)(identical actions among the same parties in different forums). *Id.*

NOTICE OF HEARING FOR JANUARY 20, 1998:

Without any further information, nor regard for the legitimacy of the assertion of his client's attorney/client confidences, the prosecutor caused a Notice of Hearing for a **final** hearing **for 5:30 o'clock p.m.** on the evening of **January 20, 1998**. A33-A34. Said Notice described the hearing as being upon, *The Complaint of Jon Serbin against CALVIN FOX*. **See**,A33. No other matter was noticed.

In said notice and instructions, the STATE required your Petitioner to appear and to present his defense to Jon Serbin's complaint and warned that there would be grave consequences if the Petitioner did not appear and defend. **See**, *id.*

PETITIONER'S NOTICE OF BINDING CONFLICT:

On **January 8, 1998** in response to said Notice of Hearing the undersigned delivered a Notice of Conflict and Motion and then on **January 12, 1998** a letter, again confirming the PETITIONER's desire to appear and to defend upon the Complaint of Jon Serbin, but relating that at **9:00 o'clock a.m. on January 20, 1998** prior to said scheduled hearing at 5:30 o'clock p.m. on **January 20, 1998**, the undersigned was required to appear and to commence a **specially set** federal arbitration trial **for his employer** in *Tutor Time Child Care Systems v. Morriss and Progeny*, in

Seattle, Washington. **See**, A35; A36-A38. The Petitioner asked for a delay of three (3) weeks, which was the duration of the scheduled trial. **See**, *id.* Attached to said Notice and Motion was a copy of the RESOLUTION OF THE FLORIDA STATE-FEDERAL COUNCIL REGARDING CALENDAR CONFLICTS BETWEEN STATE AND FEDERAL COURTS [hereinafter the STATE-FEDERAL CONFLICT ORDER] demonstrating that said federal arbitration trial had precedence over the the present state administrative hearing. **See**, A39-A40.

EX PARTE HEARING ON JANUARY 20, 1998:

Despite the clear mandate of the STATE-FEDERAL CONFLICT ORDER the prosecutor refused to reschedule the January 20, 1998 hearing. **See**, A45-A54. However, it was not disputed that the Petitioner was in Washington at the time of the hearing. **See**, A53-A54. The Committee proceeded *ex parte* with only three (3) of nine (9) Committee members present. A44-A46.

Although LINDA SERBIN denied during a subsequent meeting with the Petitioner that she was at said January 20, 1998 hearing, in the **absence of your Petititioner**, the prosecutor was able to cause LINDA SERBIN to appear **unsworn** [under Florida law] on the telephone. See, A45-A53. As noted, the undersigned was unaware until **August 12, 1998** that LINDA SERBIN was on the telephone unsworn during the January 20, 1998 hearing. **See**, A65 and A74 (Petition for Review); A98,A96 and A101-107(status conference); A132, para. 4; A120 (Petitioner remarks). There was no inquiry as to whether she waived the presence of your Petitioner, who was still her counsel in the underlying cause, nor

any showing that she waived her attorney client privilege and was informed of any her rights under the Fifth Amendment to avoid self-incrimination. **See**, *id.*

Relative to this Petition, at said **January 20, 1998** hearing the 11th Circuit Committee expressed material confusion about the basis of Jon Serbin's claim; and asked material questions, which the PETITIONER would have answered and would have presented in his absolute defense to the Complaint of JON SERBIN, if the Petitioner had been allowed his right to appear and defend against the taking of his license. **See**, A47-A51; A57-A60; **compare**, A80-A93; A182-A188.

However, without the PETITIONER's appearance and presentation of his defense to the taking of his license on **January 20, 1998**, the STATE's 11th Circuit Grievance Committee found probable cause to refer this matter to the Florida Supreme Court under Rule 5-1.2(f)(2) to revoke the license of the Petitioner and take his livelihood. See, A5-A6; A63.

NOTICE OF NON-COMPLIANCE and RESPONSE:

On March 2, 1998 under Rule 5-1.2(f)(2) Florida Trust Accounting Rules the prosecutor filed a Notice of Non-Compliance in the Florida Supreme Court. A5-A6. Under Rule 5-1.2(f)(2) Your Petitioner filed his Response alleging, all of the foregoing complaints and that there had been a gross denial of fundamental due process in the *ex parte* hearing. **See**, A64-A76.

On **March 25, 1998** based upon Rule 5-1.2(f)(2) and the pleadings, the Florida

Supreme Court referred the matters framed by the pleadings for appointment of a referee. A78. On **April 2, 1998** Florida 11th Circuit Judge Paul Siegel, was appointed as a **Referee** to conduct proceedings upon the matters framed in the foregoing pleadings. A79.

REFEREE'S HEARING ON JUNE 10, 1998:

On June 10, 1998 the Referee conducted a status conference at which your Petitioner **desperately** attempted to explain his dilemma and sought due process, thus:

> MR. FOX: . . .Jon Serbin was not my client when the funds for the house were received. That is abundantly clear as reflected in my verified response and the exhibits. . . I think that what happened here was that Mr. Freshman . . .he did not make any effort whatsoever to obtain additional information. I spent a lot of money on my voice mail system. [Freshman] sent me a letter, which I attached to my response, in which he says, I chose not to respond to your voice mail system. [A98-A99]
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> * * *
>
> MR. FOX; If you read my responses, every time they sent me a subpoena. . I stated to them that Jon Serbin was not my client at the time and that in order to respond to this matter, Linda Serbin must waive attorney-client privilege matters. She has not. She refuses to. She told the investigator she would not waive it. She told their investigator that in fact she does not wish to make a complaint. Everything is fine with her.

I think that I cannot be blackmailed by Mr. Jon Serbin into disclosing Linda Serbin's client/attorney matters in order to defend this case. I am put on the horns of a dilemma by the Bar. In order to defend this case, I must disclose attorney/client information matters.
The client has declined to allow me to do that, repeatedly.
I am on the horns of a dilemma, Your Honor. . . .
I think the issue here is . . and I think this is why Justice Kogan remanded it. The issues drawn by the documents filed before the Court. . .

MR. FOX: I did appear with a response, that I could file. I appeared with a response each time they subpoenaed me.
It was fully my intent to appear before the Committee because I hoped that Linda Serbin would be there, but she declined to appear. [A100-A101].

* * *

MR. FOX: Your Honor, in order to disclose a response to that question, I would have to explain the entire transaction between Mrs. Serbin and myself. I have repeatedly told the Bar that I would like to cooperate, but she doesn't want to waive her attorney/client privilege. I repeatedly told them that. I think that is why the Committee said, okay, Mr. Fox come on down and let's talk about it. . . .

MR. FOX: That in fact is what I intended to do at the hearing scheduled for the 20th. They just like ignored the fact that I was

called to a trial in Washington State. [A103].

* * *

MR. FOX: Your Honor, I think that's why the Committee set a meeting. I was hoping that Linda would be there and I was hoping that I would be able to do what the Court is suggesting, and that is to disclose these matters in camera somehow.

I have to tell you that even as late as last week, I spoke to her face to face and I said, Look, this has to be resolved.

She was loathed to have this matter opened up in the public and these records are public records, unfortunately. [A104].

* * *

MR. FOX: She told me on Friday, and I brought this up again, that she . . and this was a face to face meeting .that she did not want to proceed with this matter, that she had no complaint against me in this matter and that she had no problems in this matter.

Now they come up with this thing on Saturday, the next day. There [are] a host of things going on here . . I have been very anxious to explain this situation myself.

I just attended a seminar a couple of months ago and one of the ethics portions of it was about attorney/client privilege. It is one of the most sacred things.

In this case, my disclosure would be devastating to Ms. Serbin, to her family and to Jon Serbin. Socially and otherwise, she is an extremely proud woman. She is an extremely

socially well known woman in her community. [A108].

* * *

MR. FOX: This was . .and I think if you read in the beginning of the letter, this was because you presented me a few days earlier with a typed statement from Linda Serbin that she adopted Jon Serbin's complaint.
I just glanced at it. I assumed that it was legitimate. Then when I looked at it later, it turned out it wasn't her signature. She said that she never signed it.
That's why I issued that letter, because if Linda Serbin wants me to be able to defend this, she has to let me go. I am still her attorney in a Circuit matter pending on Miami Beach. [A109].

* * *

MR. FOX: In [January] of 1998, Your Honor, I don't think the Committee, if they allowed me to appear before them, would have referred this matter any further. [A110}.

* * *

MR. FOX: I would like [the Bar] to respond to my response and the matters raised in the response. I think that is relevant.
I think that I am entitled to due process. I have been denied due process on a very serious matter. [A111-!112].

Your Petitioner's complaints fell on deaf ears. Relative to this Petition, Rule 5-1.2(f)(2) specifically provides that:

> A grievance committee or referee shall hear the issue of noncompliance

> and issue findings thereon within 30 days of the request for issuance of the notice of noncompliance.

Notwithstanding his appointment as a Referee and his limited powers, **See**, The Florida Bar, 329 So.2d 301 (Fla. 1974), Referee Siegel at the urging of the prosecutor disregarded the mandate of Rule 5-1.2(f)(2) to conclude this matter within 30 days; and **declined** to consider the Petitioner's due process and attorney/client confidentiality claims *in camera* as framed by the pleadings. **See**, A105-A112. Instead on **June 10, 1998**, at a status hearing, Judge Siegel opined:

> *Let me stop you Mr. Fox. I think that the proceedings before the Grievance Committee are almost moot at this point. I don't rely, really, and probably will not rely in anything I do on what the Grievance Committee did.* [A99].
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> * * *
>
> *We are beyond that right now.* [A103].
>
> * * *
>
> *You are beyond that now. You are in front of me. I have to resolve the matter.* [A110].

See, **also**, A111-A112 (Referee ignores comments of Fox about denial of due process; and requiring the prosecution to respond to the issues as framed by pleadings).

Additionally, four (4) days before the June 10, 1998 status hearing the new prosecutor, Wenzel [apparently believing your Petitioner's contention that JON SERBIN **had forged** Linda Serbin's

signature], obtained a sworn statement from LINDA SERBIN, which is **not** part of the record herein and in which **for the first time** she adopts the September 1996 complaint of Jon Serbin. **See**, A105. The statement was again obtained from Linda Serbin without the knowledge or consent of your Petitioner and without Linda Serbin being informed of her rights under the Fifth Amendment.

Before the Referee, the prosecution did not contest that your Petitioner had legitimately asserted an attorney/client privilege at all times before the Referee's hearing. Instead the prosecution contended that the subsequent **June 6, 1998** statement of Linda Serbin defeated any claim of attorney/client privilege and the Petitioner's request to present the privileged communication, *in camera*. **See**, 104-A105. Therefore, Referee Siegel refused the Petitioner's request to review any documents *in camera* as required by the substantive law. **See**, A107; A110. Nevertheless, the STATE also maintained that it was **not** proceeding upon the Complaint of Jon Serbin as augmented by the June 6th statement of Linda Serbin and did not do so until the **February 29, 2000** hearing discussed at page 18 below.

However, as a consequence of the foregoing surprise disclosure of the **June 6, 1998** written statement of LINDA SERBIN your Petitioner, **a.)** attempted to settle this cause [**see**, A118-A128; A132-A135 (Verified Motion to Vacate and for Rehearing)]; and **b.)** forwarded an extensive narrative letter detailing his extraordinary, representation of LINDA SERBIN (**see**,, A80-A93). However, inasmuch as the prosecution was not proceeding upon

the newly minted Complaint of Linda Serbin, your Petitioner still attempted to explain your Petitioner's defense to the complaint of Jon Serbin, without disclosing Linda Serbin's confidences. **See**, A89-A93. Referee Siegel also denied a motion to disqualify, based upon his extensive personal and political history of conflict with your Petitioner. **See** A142-A143.

REFEREE HEARING ON AUGUST 14, 1998:

The only other hearing below was set for **August 14, 1998**. A116; A117-A128. However, on **August 12, 1998** your Petitioner met with the new prosecutor, Wenzel, and agreed upon settlement, including: **a.)** admission of all documents and transcripts; **b.)** Petitioner's documents would be examined in camera; and **c.)** that the matter would be remanded to the Grievance Committee upon the newly minted Complaint of Linda Serbin. **See**, A133-A136. However, the settlement fell apart when Wenzel's supervisor, SANKEL, subsequently repudiated the agreement and refused to agree to an order or any conditions. **See**, A117-A128 (Sankel objects); A131-A140 (Verified Motion to Vacate etc.); A136-A137 (repudiation).

On September 4, 1998, without conducting any proceedings upon the matters framed by the pleadings nor the attempted settlement, and without any evidence other than the transcript of the 11th Circuit Grievance Committee hearing on January 20, 1998, Referee Siegel issued his report, recommending that the Petitioner lose his license. A129-A130. The Petitioner filed a Verified Motion to Vacate, which was summarily denied. A131-A141; A142-A143.

FLORIDA SUPREME COURT REVIEW:

The Petitioner filed a timely Petition for Review and briefs in the Florida Supreme Court, in which he complained as to all of the matters stated herein. **See**, A144-A153; **e.g.**, A154-A165. The STATE argued *inter alia* that Florida's *public interest* in disclosure overrides the attorney/client privilege and any concern for the denial of fundamental due process. **See**, A164 (reply to prosecutor argument).

On **November 24, 1999**, without argument or discussion in an unsigned **form order**, the Florida Supreme Court affirmed the STATE's position and the Grievance Committee's finding of probable cause and adoption by the Referee. A3-A4. In said form order the automatic stay protections afforded all litigants under Florida Rules of Appellate Procedure 9.300(b) and 9.340(b), were denied to your Petitioner. *Id.* This Court has jurisdiction over said *per curiam* opinion, where error as in the case at bar is shown. **See**, **e.g.**, Florida V. Rodriguez, 461 U.S. 940, 103 S.Ct. 2115, 77 L.Ed.2d 1298 (1983)(granting review and reversing per curiam opinion).

The Petitioner filed a bitter Motion for Rehearing; Motion for Stay and Motion to present his absolute defense and contract with LINDA SERBIN *in camera*. **See**, A166-A174. Your Petitioner also filed a motion, complaining that he had been denied fundamental due process and equal protection by the denial of his rights as a litigant under Rules 9.300(b) and 9.340(b). **See**, A173-A174. On **February 22, 2000** the Florida Supreme Court without comment denied said motions. A179.

GRIEVANCE HEARING ON FEBRUARY 29, 2000:

The proof of the Petitioner's absolute defense to Jon Serbin's complaint was manifested on **February 29, 2000**, before the same 11th Circuit Grievance Committee, when your Petitioner **was** permitted to testify and defend against the taking of his license at a hearing scheduled by the STATE's new prosecutor, WENZEL, upon The Complaint of Jon Serbin as **augmented** by the June 6, 1998 complaint of Linda Serbin. A180-A181.

At the hearing on **February 29, 2000**, Serbin's financial records were produced showing no irregularities for the distribution of the LINDA SERBIN funds; and Jon Serbin and Linda Serbin testified; and the Petitioner testified, verifying the content of his July 20, 1998 letter to prosecutor Wenzel and the Serbin contract. **See**, A80-A93 (verified letter to prosecutor); A182-A188 (Serbin Contract and Closing Statement). On **February 29, 2000**, for the first time, the undersigned was allowed to disclose the written agreement and the closing statement for Linda Serbin; and to testify as to the claims of Jon Serbin. **See**, A80-A93; A182-A188. As a consequence, the Complaint of Jon Serbin was shown to be **frivolous**; and the STATE's same 11th Circuit Grievance Committee voted **unanimously** to reject the **September 4, 1996** Complaint of Jon Serbin even as augmented by Linda Serbin's **June 6, 1998** written complaint. **See**, *Id.*; A189-A190.

Notwithstanding the foregoing **unanimous** action on February 29, 2000 taken by the same 11th Circuit Grievance Committee, the STATE has refused to withdraw the

foregoing order of suspension by the Florida Supreme Court and the license of the undersigned remains suspended.

CONCLUSION:

Under Florida's *public interest* policy and practice in prosecutions of attorneys, prosecutors are allowed to recklessly disregard the sanctity of the attorney/client **relationship** in order to harass and coerce a client into making a complaint against an attorney, **while he or she still represents the client** and without obtaining a waiver of the attorney's presence, permission or knowledge and without any advice as to criminal prosecution. **See**, A21, para. 8; A28-A29 para.9-12; A91 (verified letter).

More importantly, because this was an attorney prosecution the Court; the Grievance Committee; and the Referee also rubber stamped the trampling of the Petitoner's fundamental rights and the reckless disregard for the protection of the attorney/client privilege. **See**, A43-A63 (Grievance Committee); A94-A115 (Referee);A129-A130and A142-A143(Referee's report and order); A3-A4 and A179.

The present Petition follows.

REASONS TO GRANT THE WRIT

Your Petitioner was admitted to practice on May 22, 1975 and has been an honorable and productive member of his profession and community. **See**, A191-A193. Your Petitioner has successfully prosecuted the rights of the people of Florida in more than 700 cases on appeal and before this Court on the merits in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052,

80 L.Ed.2d 674 (1985)(standard for ineffective counsel); Rider v. Florida, 470 U.S.1075, 105 S.Ct. 1830, 85 L.Ed.2d 132 (1985)(common law immunity for spousal rape); Florida v. Rodriquez, 469 U.S. 1, 105 S.Ct. 308, 83 L.E.d2d 165 (1984)(second appearance for same case on articulable suspicion); Florida v. Zafra, 463 U.S. 1202, 103 S.Ct. 3529, 77 L.Ed.2d 1382 (1983)(searches of boats); Florida v. Rodriquez, 461 U.S. 940, 103 S.Ct. 2115, 77 L.Ed.2d 1298 (1983)(rehearing granted; cert. Granted, reversal of per curiam state decision); Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(drug courier profile); and Chandler v. Florida, 449 U.S. 560, 101 S.Ct.802, 66 L.Ed.2d 740 (1981)(cameras in the courtroom).

Relative to this Petition, this Court has long recognized the severity of depriving a person of the means of livelihood. Cleveland v. Loudermill, *infra*, 105 S.Ct. at 1494; Fusari v. Steinberg, 419 U.S. 379, 389, 95 S.Ct. 533, 539, 42 L.Ed.2d 521 (1975); Bell v. Burson, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 113 (1971); Goldberg v. Kelly, 397 U.S. 254, 264, 90 S.Ct. 1011, 1018, 25 L.Ed.2d 287 (1970); Sniadach v. Family Finance, 395 U.S. 337, 340, 89 S.Ct. 1820, 1822, 23 L.Ed.2d 349 (1969). In this case, the Petitioner's sacrifices of his career and his family in order to protect against the STATE's unlawful practices and reckless disregard for the attorney/client privilege and the STATE's denial of **fundamental due process** has mortally wounded both his **personal** and **professional** life and a career in any other profession.

I. FUNDAMENTAL DUE PROCESS:

That the right to due process is fundamental to our system of justice and the Bill of Rights cannot be gainsaid. E.g., Baldwin v. Hale, 68 U.S. (1 Wall.) 223, at 233, 17 L.Ed. 531 (1864). In Baldwin v. Hale, the Court explained that:

> Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense.

See, also, Hagar v. Reclamation District, 111 U.S. 701, 708, 4S.Ct. 663, 27L.Ed. 569 (1884).

Consistent with federal law, Florida purports to create a property right in a professional license, which may not be taken without due process under the state and federal constitutions. See, Delk, D.D.S. v. Department of Professional Regulation, 595 So.2d 966, at 967 (Fla. 5th DCA 1992); Woods v. Department of Transportation, 325 So.2d 25, at 26 (Fla. 4th DCA 1976). The prescribed standard of due process in administrative proceedings against a professional license in Florida is identical with the federal standard:

> A professional has a property interest in his license to practice his profession protected by the due process clause of the state and federal constitutions, which provide that no person shall be deprived of life, liberty or property without due process of law. [Citations omitted].

Delk D.D.S. v. Department of Professional Regulation, 595 So.2d 966, at 967 (Fla. 5th DCA 1992). Following this basic tenet, the due process standard for notice is identical to the federal constitutional standard. See, Woods v. Department of Transportation 325 So.2d 25, at 26 (Fla. 4th DCA 1976), citing, Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

Notwithstanding these standards, under Florida's *public interest* policy for prosecution of attorneys, when a prosecutor undertakes the prosecution of an attorney the foregoing rights and the rights of his or her client are forfeited. For example, under Rule 5-1.2(f)(1) Attorneys prohibited from raising *any applicable privilege personal to the lawyer* as a defense to the reckless or unlawful conduct of a prosecutor. Similarly, under Florida's *public interest* policy, in the prosecution of an attorney there is no concern for the attorney/client relationship, nor concern for the protection of the attorney/client privilege. Thus, as in the case at bar, the attorney's client becomes a target for *ex parte* interrogation without notice or regard for the Fifth Amendment or attorney/client rights of the client. In no other place in the law does such prosecutorial misconduct regularly occur and go unsanctioned. Under Florida's *public interest* policy, on review of prosecutions of attorneys the Florida Supreme Court has allowed prosecutors a rubber stamp on an unsigned form order, under which the attorney has less rights than any other citizen/litigant; and review by this Court for the reasons noted below in Section III is impossible.

There was obviously no fundamental due process in the present case if this cause is measured by any standards, which are applicable to other professional licenses. The proceedings below were predicated upon the *ex parte* hearing on **January 20, 1998**, which was not supposed to be *ex parte*. Furthermore, although, the Notice of Hearing provided that it was for, *The Complaint of Jon Serbin against Calvin Fox*, in the **forced** absence of your Petitioner the prosecutor slipped in LINDA SERBIN unsworn on the telephone. In light of Serbin as a surprise witness and the evident confusion of the Grievance Committee, it was essential to fundamental due process that your Petitioner was in attendance at the January 20th hearing to defend against the taking of his license.

It was obviously essential to fundamental due process that the attorney/client protection afforded LINDA SERBIN be waived in order to allow the PETITIONER ethically and legally to present his defense to the Complaint of Jon Serbin, and *good cause*, which would have completely exonerated the PETITIONER as reflected in the **uninanimous** decision on **February 29, 2000** by the same 11th Circuit Grievance Committee. **See**, A189-A190 (no probable cause finding).

Sub judice, the undersigned was instead forced by the STATE's own Rules of Professional Conduct to be in attendance at a federal arbitration trial in Seattle, Washington, which was the first to commence of the proceedings in conflict in the present case. **See**, State-Federal Conflict Order (A39-A40); **see**, **also**, Local Rule, 11th Judicial Circuit Administrative Order 93-64 (entitled, *In Re: Uniform*

inter/intra Circuit Conflict Resolution Procedure)(A41-A42).

Under federal law, the taking of the your Petitioner's means of livelihood without fundamental due process was **manifestly unlawful**. **See**, Cleveland v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). In Loudermill, where the Petitioners had lost their livelihood without being able to defend at a hearing this Court explained that the rights infringed upon were based upon minimum federal due process rights:

> In Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980), we pointed out that minimum procedural requirements are a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action. 105 S.Ct. at 1492.

This Court in Loudermill further explained that the right to due process is guaranteed by the constitution and not by the **process** for the deprivation of life, liberty or property rights. 105 S.Ct. at 1493. In affirming the requirement of a hearing ordered by the courts below, the Loudermill court explained that:

> An essential principal of due process is that a deprivation of life, liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. We have described the root requirement of the Due Process Clause as being

> that an individual be given an opportunity for a hearing before he is deprived of any significant property interest. [Citations omitted].

The Court in Loudermill therefore held that the right to work, like the license of the undersigned in the case at bar, once conferred is a vested property right, which, may not be taken without a showing of misconduct and a meaningful opportunity to a hearing; and in the absence of these elements, the taking of the right is a denial of **fundamental due process**:

> The essential requirements of due process . . . are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a **fundamental due process requirement**. See,Friendly, *Some Kind of Hearing,* U.Pa.L.Rev. 1267, 1281 (1975). [Emphasis added].

Under Loudermill and the foregoing authority, this Court should accept jurisdiction herein, where the STATE by providing a hearing, at which the Petitioner had to defend his license and right to a livelihood, which he could not attend, denied the Petitioner a meaningful right to be heard and therefore **manifestly** denied the Petitioner his right to **fundamental due process**.

II. ATTORNEY/CLIENT CONFIDENTIALITY:

The broader issue for this Court's consideration is Florida's *public interest* policy and practice of reckless disregard by STATE prosecutors of the

attorney/client privilege, simply because the prosecutors are going after an attorney. Compare, e.g., Swidler & Berlin v. United States, ____ U.S.___, 118 S.Ct. 2081, ___ L.Ed.2d____ (1998). In Swidler & Berlin, the Petitioners had, as in the case at bar, sought to quash grand jury subpoenas seeking the notes of a attorney/client conference of an attorney, who was deceased. In reversing the Court of Appeals order for disclosure of said notes, this Court explained the sanctity of the attorney/client privilege thus:

> The attorney client privilege is one of the oldest recognized privileges for confidential communications. The privilege is intended to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice. Our interpretation of the privilege's scope is guided by the principles of the common law . . . in the light of reason and experience.[Citations omitted].

See, also, Upjohn v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 682, 66 L.Ed.2d 584 (1981). This Court in Swidler & Berlin v. United States concluded that sanctitiy of the attorney/client privilege extends even beyond the grave.

In Florida, other than as in prosecutions of attorneys herein, the privilege applies to all communications whether the attorney is hired or not, Kier v. State, 152 Fla. 389, 394, 11 So.2d 886, 888 (1943); the privilege may be waived only by the client, Schetter v. Schetter,

239 So.2d 51, 52 (Fla. 4th DCA 1970); a lawyer may raise the claim of privilege to protect his client, Seaboard Air Line Ry v. Parker, 65 Fla. 543, 62 So. 589 (1913); once raised, the burden of showing that the privilege does **not** apply is **upon the party seeking disclosure**, Haskell Company v. Georgia Pacific Company, 684 So.2d 297 (Fla. 5th DCA 1996); and the court should conduct an *in camera* hearing to protect against violations of the privilege, Del Carmen Calzon v. Capital Bank, 689 So.2d 279, 281 (Fla. 3d DCA 1995). Finally, where an attorney has been **accused by his client of wrongful conduct**, the attorney may then defend against such accusation without an express waiver of the privilege. Wilson v. Wainwright, 248 So.2d 249 (Fla. 1st DCA 1971).

Notwithstanding the foregoing substantive law and this Court's views in Swidler & Berlin, supra, under Florida's *public interest* policy in prosecutions of attorneys as in the case at bar, the STATE recklessly disregards the foregoing rules and instead chooses to bully and coerce attorneys into saving themselves and abandoning the sanctity of their client's confidences. The error in the STATE's policy and practice, was amply demonstrated in the case at bar, on **February 29, 2000**, when your Petitioner was for the first time relieved of the attorney/client privilege and allowed to defend against the taking of his livelihood. **See**, A189-A190 (no probable cause); A182-A188 (contract); A80-A93 (verified statement). It was wholly apparent to the Grievance Committee that your Petitioner could **not** have disclosed LINDA SERBIN's attorney/client confidences. Without a waiver by LINDA

SERBIN of her confidences, your Petitioner would have unlawfully and unethically exposed his client to ridicule and scorn in her community, making your Petitioner a witness against her in her own divorce and in state and federal criminal and civil proceedings. **See**, *id.*

In In Search of Atticus Finch (2d Ed. 1997), at p. 131, the author laments that the profession has been greatly diminished by self interest and the failure to uphold the most noble standards of our profession, where he describes the missing qualities as:

> [t]he lack of a pervasive sense of mission by individual lawyers, the absence of a sense of rightness and righteousness that transcends self-interest and commercialism, the loss of a sense of calling, an idealism as in a vocation, that gives all of our labor its dignity.

It was that *sense of calling*; *idealism*; *pervasive sense of mission*; and *sense of rightness*, which transcended the self-interest of your Petitioner herein and to cause your Petitioner to seek to preserve and to protect that greatest traditions of our profession, the attorney/client privilege. **See, also**, Florida Ethical Opinion 92-5 (recommending that Florida attorneys **resist** administrative subpoenas to protect the confidences of Florida attorneys' clients). It has not been possible to bear this burden without the belief that this Court would uphold the exercise of that noble tradition herein.

Under the foregoing authority this Court should also accept jurisdiction herein.

III. CASE IMPORTANCE and EQUAL PROTECTION:

This Court should also accept this case **first**, because the prosecutorial misconduct herein broadly affects attorneys and their clients appearing in state and federal systems. The conduct described herein is widespread because of misguided zeal to protect the *public interest* and this error spills over into all areas in that the STATE's prosecutors refer information to each other.

Second, this Court should accept this case, because the error herein recurs and yet evades review, because of the very nature of the illegality imposed. Thus, if the STATE succeeds in coercing an attorney to give up his clients' confidences in the attorney's own self-interest, nobody in the legal system will present it for review by this Court. If the STATE does not succeed, the attorney without a livelihood and no experience in this Court has neither the means, nor the ability to present this matter for review.

Third, this Court should accept this case, because of official practices and policies, which void the attorney/client privilege; and allow for the denial of fundamental rights because of the status of your Petitioner as an attorney. **See** Rule 5-1.2(f)(1). In no other area of the law is such trampling of fundamental rights and the attorney/client privilege allowed.

Fourth, this Court should accept this case, because there is no other Court available to remedy the chronic ill herein. Under Florida's *public interest* policy and practice and Florida Rule 5-

1.2(f) in the prosecution of attorneys, the Florida Supreme Court, greatly overlooks the trampling of fundamental rights and the prosecutor's reckless disregard of attorney/client confidences. While it may help reduce the Court's case load by forcing quick compliance, the Court's form orders limiting the stay protections afforded all litigants under Florida Rules 9.300(b) and 9,340(b) is emblematic of Florida's practice of limiting the rights of attorneys and their clients in prosecutions of attorneys in favor of the *public interest*. However on their face the Rules apply to all litigants. Attorneys like ax murders are entitled to due process and equal protection.

Finally, this Court should act as a Court of last resort, where this matter broadly affects all attorneys and their clients, whose rights to appear before the federal courts as in the case at bar, are uniquely affected. Cf., Florida v. Rodriguez, 469 U.S. 1, 7, 105 S.Ct. 308, 311, 83 L.Ed.2d 165 (1984)(Brennan, J. dissenting on jurisdiction).

CONCLUSION

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that jurisdiction be granted and all proceedings below stayed pending review.

CALVIN DAVID FOX
Post Office Box 5286
Fort Lauderdale, Florida 33310
(305) 839-5035

APPENDIX TO

BRIEF OF PETITIONER ON JURISDICTION

APPENDIX TO
BRIEF OF PETITIONER ON JURISDICTION
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SUPREME COURT OF FLORIDA

Wednesday, November 24, 1999

THE FLORIDA BAR, CASE NO.: 92-484

Complainant,

vs.

CALVIN D. FOX,

Respondent.

_____/

After review of the report of the referee and the briefs submitted by both the Florida Bar and Respondent, we hereby approve the recommendation of the referee and suspend the Respondent from the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997. This suspension shall be effective 30 days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed.

The suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period. Satisfactory compliance with the subpoena shall be stated in a notification to the referee by the

Florida Bar. If the suspension becomes effective, it shall continue until such time as notice of compliance is made by the Florida Bar. Any dispute as to whether compliance is satisfactory shall be determined by the referee.

Respondent's Motion to Strike Record and Motion to Discharge Notice of Noncompliance are hereby denied. Not final until time expires to file motion for rehearing and, if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

Debbie Causseaux
Acting Clerk, Supreme Court

cc: Hon. Paul Siegel, Referee
Mr. Billy Jack Hendrix
Mr. Gregg D. Wenzel
Mr. Calvin David Fox

IN THE SUPREME COURT OF FLORIDA

CASE NO. 97,70,300(11I)

THE FLORIDA BAR,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

NOTICE OF NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA

COMES NOW, The Florida Bar, by and through its undersigned attorney, and pursuant to Rule 5-1.2(f) of the Rules Regulating The Florida Bar, file this Notice of Noncompliance with a Grievance Committee, Subpoena, and in support thereof states as follows:

1. On January 20, 1992, Grievance Committee I of the Eleventh Judicial Circuit met pursuant to Rule 3-7.4 of the Rules of Discipline to consider whether good cause existed for Calvin D. Fox's failure to comply with a grievance committee subpoena served on him on September 23, 1997, which required his appearance and the production of trust account records file and to consider The Florida Bar's request for issuance of a Notice of Noncompliance.

2. The findings of Grievance Committee I of the Eleventh Juridical Circuit are attached hereto and incorporated herein as Exhibit 1.

3. On January 20, 1992, Grievance Committee I of the Eleventh Judicial Circuit found that respondent had failed

to show good cause for failure to comply with a subpoena.

WHEREFORE, The Florida Bar respectfully requests that the respondent be suspended from the practice of law until such time as he produces the requested trust account records and client file.

I HEREBY CERTIFY that the original of the above and foregoing Notice of Noncompliance with a Grievance Committee Subpoena was mailed to Sid J. White, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927 and a true and correct copy was mailed to Calvin David Fox, P.O. Box 5286, Fort Lauderdale, Florid 33310 and to John T. Boggs, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 on this 2nd day of February 1998.

Respectfully submitted,

ELENA EVANS, Bar Counsel
Florida Bar No. 826359
The Florida Bar
444 Brickell Ave, Ste M-100
Miami, Florida 33131
(305) 377-4445

The Florida Bar
Inquiry/Complaint Form

Your Name: Jon Serbin
Address: 9241 Collins Ave 7
City: Surfside State: FL
Telephone: 866-1902 Zip Code: 33154

What is the name and address of the attorney that is the subject of this inquiry/complaint?
Attorney's Name: Calvin David Fox
Address: PO Box 454006
City: Miami State: FL
Telephone 839-5035 Zip Code: 33245

Do you have an attorney representing you in this inquiry/complaint? __ Yes / _X No
If yes, give your attorney's name and address:
Name: _____
Address: _____
Telephone:

DESCRIBE YOUR COMPLAINT, PROVIDE DATES AND FACTS OF ALLEGED MISCONDUCT
(Use a separate sheet if necessary. Do not write on the back of this form!)
My daughter hired Mr. Fox to reprsent her in a liability case for an injury she received. My wife asked him to assist us in a foreclosure that was proceeding against our home. When a buyer brought by Paula Jones of Riteway Realty asked for a delay in closing, $25,000 of a $50,000 deposit was transferred from Riteway to Mr. Fox's trust account in approximately May of 1993. He released about $6,000 to m wife so we could move. He has been holding the balance plus

accrued interest since that time although no one else has a claim on the money. He does not have an office and the only way to contact him is by his voice mail number. My wife and I have repeatedly asked for the money via his voice mail. It can take up to 3 months for a return call. On several occassions Mr. Ox has set up appointments with my wife and has either cancelled at the last minute or not shown up.

The buyer from Riteway defaulted on the balance of the escrow deposit. Riteway was a sub-agent representing us and in our opinion was clearly guilty of misrepresentation. My wife asked Mr. Ox to handle this situation and he said he would and would get his fees through a suit against Riteway.

We did this after a period of time had gone by and neither the broker for the sale of our home, Doug Dewitt of New Wave Realty, or we had heard from FREC regarding the escrow dispute. Mr. Fox later showed us a letter sent to FREC by Riteway saying that the matter was in litigation. Mr. Ox told us that the letter was backdated and that FREC was investigating since the dispute was not reported within the proper time period. We still have never heard from FREC.

We asked Mr. Fox to keep us informed of all developments in the case and send us copies of all depositions and motions. We have not been sent any of this material. We have left messages saying that we have relevant material concerning liability, punitive damages and the amount we have been damaged, but he has not met with us to discuss any of this.

We would like to receive the trust account money and to know that the case against Riteway is being properly handled.

Jon Serbin

THE FLORIDA BAR
Miami Office
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131-2404
(305) 377-4445

September 9, 1996

Calvin David Fox
Attorney at Law
PO Box 454006
Miami, Florida 33245

RE: Complaint by Jon Serbin against Calvin David Fox
The Florida Bar File No. 97-70,300(11I)

Dear Mr. Fox:

Would you please give us your position concerning the enclosed correspondence by Jon Serbin. We would appreciate receiving your written response, *with a copy to Mr. Serbin*, not later than September 24, 1996. A reply from you will assist this office in determining whether this is a matter which must be referred to a Grievance Committee. **Also, please return the enclosed Certificate of Disclosure.**

Rule 3-4.8 of the Rules of Discipline provides, in essence, that any member of The Florida Bar who is the subject of investigation shall respond in writing to all investigative inquiries made by bar counsel or grievance committee. Rule 4-8.4(g) of the Rules of Professional Conduct provides that a lawyer shall not fail to respond in writing to any inquiry

by a disciplinary agency when such agency is investigating the lawyer's conduct. Accordingly, under these rules, it is a violation for a respondent to fail to forward a written response to inquiries made by bar counsel, a grievance committee, or a disciplinary agency.

Thank you for your cooperation.

Very truly yours,

ELENA EVANS
Assistant Staff Counsel

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 492108
Fort Lauderdale, Florida 33349
(305) 839-5035

October 20, 1996

Elena Evans
Assistant Staff Counsel
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

RE: File No. 97-70,300 (11I)
Complaint by Jon Serbin

Dear Ms. Evans:

Please be advised that the undersigned has not been able to prepare an initial response to the above referenced complaint by John Serbin. This request is for an additional thirty days to respond for the reasons set forth below.

In order to respond to this complaint, the undersigned would be required to discuss certain matters, which are extremely private to his clients. Ms. Serbin has been in California visiting her sister. Since that time Mrs. Serbin has been unavailable and she has not answered her local telephone. As would be reflected in said response, Jon Serbin has no claim whatsoever to any proceeds of any case.

Your immediate attention to this matter is required. If you have any questions or need additional information, please advise. If I do not hear from you I will assume that this request for additional time is sufficient.

Very truly yours,
CALVIN DAVID FOX,
Esq.

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 492108
Fort Lauderdale, Florida 33349

(305) 839-5035

November 3, 1996

Elena Evans
Assistant Staff Counsel
Suite M-100
444 Brickell Avenue
Miami, Florida 33131

RE: Complaint by Jon Serbin
Fla. Bar File No.
97,70,300 (I)

Dear Ms. Evans:

I received your October 25, 1996 letter on Sunday, November 3, 1996, because your office insists on sending correspondence to the wrong address. **Exhibit A**. Please note the corre4ct address for your mailings.

On less than one (1) days notice you require financial records. Please be advised that I need time to confer with my client, Linda Serbin, prior to any response in this matter because the disclosures required would violate the privacy of both her and her daughter, Bess Serbin. Demand is hereby made for an additional ten (10) days for a response.

Please be advised that Jon Serbin does not have any claim to the funds he refers to. I was retained by Linda

Serbin only to save her house; and by express agreement of Linda Serbin and Jon Serbin have represented only Linda Serbin at all times, because of a gross conflict of interest with representing Jon Serbin. I would not have undertaken Ms. Serbin's tragic situation without that agreement.

Your kind attention to this matter is appreciated. If you have any questions or need additional information, please contact me forthwith.

Very truly yours,

THE FLORIDA BAR
Miami Office
Suite M-100, Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131-2404
(305) 377-4445

November 5, 1996

Calvin David Fox
Attorney at Law
PO Box 454006
Miami, Florida 33245

RE: Complaint by Jon Serbin against Calvin David Fox
The Florida Bar File No. 97-70,300(11I)

Dear Mr. Fox:

I acknowledge receipt of your faxed letter dated November 3, 1996. In order to assist The Florida Bar in its investigation of the above reference matter please provide the following information.

1. Please produce all original bank statements, cance3led checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, bank and client reconciliations for the bank account(s) wherein the funds for the Riteway Realty/Serbin matter have been deposited for the period of May 1, 1993, to the present.

2. Any and all documentation including but not limited any letters which evidence your agreement with Linda

Serbin and Jon Serbin concerning your representation of Linda Serbin.

This office will expect a written response to the Serbin complaint with the above requested information on or before November 14, 1996.

Thank you for your cooperation.

Very truly yours,

ELENA EVANS
Assistant Staff Counsel

cc: Jon Serbin with a copy of Mr. Fox's letter dated November 3, 1996 and TFB's letter dated October 25, 1996.

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

Witness Subpoena Duces Tecum
The FL-Bar File # 97-70-300(17I)

The Florida Bar,
Complaint,

v.

Calvin David Fox, Esq.
Respondent.

TO: Calvin David Fox, Esq.
Post Office Box 492108
Fort Lauderdale, Florida 33349

YOU ARE HEREBY COMMANDED to appear before William M. Luongo, Staff Auditor, of The Florida Bar, at Cypress Financial Center, 5900 North Andrews Avenue, #835, Fort Lauderdale, Florida on the 22nd day of May, 1997* at 10:00 am, to produce and bring with you at that time:

1. The original of each and every required trust account document, inclusive of bank statements, canceled checks, deposit slips, client ledger cards, cash receipts and disbursements journal, bank reconciliations, monthly and annual comparisons of trust liabilities, and any other trust account record for each and every trust account maintained by you for the period beginning with May 1993 (or the date on which the Serbin's money from Riteway Realty was deposited, whichever is earlier) and ending on the present date.

2. If you deposited client funds in any other account during this period of

time, you are hereby compelled to produce the same materials on those accounts as well, for the same period of time.

For failure to appear as herein required, you will be deemed to be in contempt of the Supreme Court of Florida.

*(in lieu of personal appearance, subpoenaed information may be furnished on or before the above referenced date by courier, hand delivery, or similar conveyance).

Dated this 22 day of April, 1997.

THE FLORIDA BAR

Charles J. Goldman
Chair
Seventeenth Judicial
Circuit
Grievance Committee I

IN THE SUPREME COURT OF FLORIDA
[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70,300(17I)

THE FLORIDA BAR, by and through the complaint of Jon Serbin,

Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

RESPONSE; MOTION FOR CLARIFICATION; MOTION FOR A PROTECTIVE ORDER; and NOTICE OF MAILING ADDRESS

TO: CHARLES J. GOLDMAN
Chair, 17th Cir. Judicial Circuit
Grievance Committee I

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Motion for Clarification; Motion for Protective Order; and Notice of Mailing Address, to wit:

1.) That the undersigned is in receipt of a subpoena duces tecum served in the above referenced case, in which the undersigned has been directed to provide financial records. **Exhibit A**. Below stated is the correct mailing address and telephone number for the undersigned.

I.

2.) First of all, said subpoena was **improperly served** with great fanfare and announcement that it was from the Florida

Bar at the offices of a client of the undersigned with calculated remarks and loud announcement to the receptionist of the client of the undersigned in order to cause maximum injury and embarrassment of the undersigned with his client, in this supposedly confidential matter.

3.) That the undersigned would respond to any subpoena of the Florida Bar for any matters by simply signing for the subpoena, which has worked just fine for all courts and agencies which have ever desired to serve the undersigned during te past twenty-two (22) years.

II.

4.) That the only complaint ever forwarded to the undersigned in this cause is an undated complaint by Jon Serbin, which was apparently received by the Miami office of the Florida Bar on September 4, 1996. **Exhibit B.**

5.) That upon information and belief, Linda Evans my have caused this matter to be transferred to the 17I above referenced committee without any lawful authority to do so after the committee, in Florida Bar Case No. 97-70,300(11I) assumed jurisdiction of considered the complaint of the Florida Bar and refused to proceed. Under **Mabie v. Garden Street Management**, 397 So.2d 920 (la. 1981) and its related decision, the Committee in 17I does not have any jurisdiction to proceed.

6.) Therefore the subpoena issued by the 17I is without any jurisdictional basis and should be quashed and withdrawn.

III.

7.) That the only client the undersigned has ever represented at all times material to John Serbin's complaint was his estranged wife, Linda Serbin. **Composite Exhibit C.**

8.) That Ms. Linda Serbin related to the undersigned on May 7, 1997, that she gave an interview to an investigator from the Miami office of the Florida Bar in April 1996. Ms. Linda Serbin, reported to the undersigned that she told the investigator that she did not wish to proceed with any complaint against the undersigned; that she had no complaint with the undersigned; that the money Jon Serbin was complaining about was never Jon Serbin's money; that she did not wish the undersigned to respond to the complaint and disclose matters veru private to herself and Bess Serbin; and that she, Linda Serbin, would sign off on a closure of the complaint in this case.

9.) That on May 7, 1997, Ms. Serbin also agreed to forward the attached draft letter to the Florida Bar, after the undersigned was able to secure a response regarding certain claims of Linda Serbin in the ongoing **Riteway** litigation, which information the undersigned has provided on this date. **Exhibit D.**

IV.

10.) That the undersigned has no financial records of Jon Serbin, who at all times relevant to the complaint was not the client of the undersigned and had no claim to the funds he has related in the above referenced complaint.

11.) That the undersigned is confused and unable to respond to paragraph 1 of the subpoena he is in receipt of, in that Linda Serbin has made no complaint herein and in response to said subpoena would state that there are no joint financial records for the, *Serbins' money* in the possession or control of the undersigned and there has never been any fund, which he or anyone else designated as, *the Serbins' money* and that he is in possession of no moneys belonging at any time to Jon Serbin.

V.

12.) That the undersigned is confused and unable to respond to paragraph 2 of the subpoena in that it seems to be vague and overboard in that it seems to request all records for any client, for who or for which the undersigned has ever maintained records since May 22, 1975, when he began to practice law, although the complaint in this cause is only by Jon Serbin, who was not his client.

VI.

13.) That the undersigned is in good faith responding to the 17I committee with the forgoing reservations and is willing to respond further if required to do so, but would request clarification of the foregoing matters and more definite statement of whose records and what records the committee is seeking.

14.) That the undersigned hereby adopts all those responses and requests previously filed regarding his desired to maintain the confidences of and privacy of his clients, Linda Serbin and Bess Serbin.

15.) That in any event if the privacy and confidences of Linda Serbin and Bess Serbin must be revealed the undersigned would first request that these matters be revealed **in camera** to avoid harm to Linda Serbin and Bess Serbin, the **only** clients of the undersigned.

WHEREFORE, upon the foregoing the undersigned would request that the Committee or the Court protect against the discovery sought; and/or quash the subpoena served on the undersigned; and cause this file to be closed; and that this Committee will further investigate the **ultra vires** act of Elena Evans in causing this matter to be removed from the jurisdiction of the Florida Bar 11I committee and if said 11I committee is found to have considered this cause that this committee will cause this matter to be dismissed for lack of jurisdiction as required by **Mabie v. Garden Street Management Company**, 397 So.2d 920 (Fla. 1981) and its progeny and/or that the committee would cause a less vague, clarified subpoena to be written and the undersigned would appear and sign for said subpoena.

LAW OFFICES OF
CALVIN DAVID FOX
P.O. Box 5286
Fort Lauderdale, FL 33310
(305) 839-5035

CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

THE FLORIDA BAR
Ft. Lauderdale Office
Cypress Financial Center
5900 North Andrews Avenue
Suit 835
Ft. Lauderdale, FL 33309
(954) 772-2245

June 19, 1997

PERSONAL/FOR ADDRESSEE ONLY

Calvin David Fox, Esq.
P.O. Box 5286
Ft. Lauderdale, FL 33310

RE: Complaint of Jon Serbin
The Florida Bar File No. 97-70,300 (17I)

Dear Mr. Fox:

Please be advised that this file is being transferred back to Miami. You are to address all future correspondence to that office.

Very truly yours,

ADRIA E. QUINTELA
Assistant Staff Counsel

AEQ/la

cc: Jon Serbin

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)
Witness Subpoena Duces Tecum

THE FLORIDA BAR,
Complainant,

vs.

CALVIN D. FOX
Respondent.
_____/

To: Calvin D. Fox
Tutor-Time - Suite 450
One Park Place
Boca Raton, Florida

YOU ARE HEREBY COMMANDED to appear before Carlos Ruca, Staff Auditor of the Miami Office of The Florida Bar, duly appointed pursuant to the Rules Regulating The Florida Bar at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on the 13th day of October 1997 at 10:00 am o'clock to testify in the above entitled proceeding, and to produce and bring with you at that time:

The original bank statements, canceled checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, bank and client reconciliations for any trust accounts wherein you may have signatory capacity for the period of May 1, 1993 to the present.

For failure to appear and testify as herein required, you will be deemed to be in contempt of the Supreme Court of Florida. Dated this 22nd day of September, 1997.

LAWRENCE N. FRESHMAN,
Chairman
Eleventh Judicial
Committee 11I

IN THE SUPREME COURT OF FLORIDA
[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70,300(11I)

THE FLORIDA BAR, by and
through the complaint of
Jon Serbin,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

RESPONSE; REQUEST FOR ADDITIONAL TIME; MOTION FOR CLARIFICATION; MOTION FOR A PROTECTIVE ORDER; NOTICE OF MAILING ADDRESS; AGREEMENT TO ACCEPT PROCESS

TO: LAWRENCE N. FRESHMAN
Chair, 11th Cir. Judicial Circuit
Grievance Committee 11I

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Response; Request for Additional Time; Motion for Clarification; Motion for a Protective Order; and Notice of Mailing Address; agreement for Process, to wit:

1.)That the undersigned is in receipt of a subpoena duces tecum served in the above referenced case at the offices of a client of the undersigned, in which the undersigned has been directed to provide financial records. **Exhibit A.** Below stated is the correct mailing address and telephone number for the undersigned.

I.

2.) First of all, said subpoena was **improperly served** with the announcement that it was from the Florida Bar at the offices of a client of the undersigned in order to cause maximum injury and embarrassment of the undersigned with his client, in this supposedly confidential matter.

3.) That the undersigned would respond to any subpoena of the Florida Bar for any matters by simply signing for the subpoena, which was worked just fine for all matters in which anyone has ever desired to serve the undersigned for any matter during the past twenty-two (22) years.

II.

4.) That the undersigned has been extremely ill for the past thirty days apparently arising from the effects of a mass in his lower left abdomen.

5.) That because of the foregoing and the intervening religious holidays, of Roshashana and Yom Kippur, the undersigned has been unable to address this matter.

6.) That the undersigned has been required to work and travel 70 to 80 hours a week for his principal corporate clients in critical and emergency and Court ordered proceedings, including mediation, hearing and injunctive relief in three cases in the U.S. District Courts in Illinois and Indiana; and the Superior Court for the State of New Jersey; and arbitration matters in Washington state and Florida for the past thirty days.

7.) That the undersigned has closed out all of his non-corporate clients, with the exception of the **Riteway** matter and one other case in which no trust funds have been required.

8.) That because of the foregoing and the matters recited herein, together with the daily business of the administration of the officers of the undersigned, he would request an additional thirty (30) days in which to respond to the present subpoena.

III.

9.) That the only complaint ever forwarded to the undersigned in this cause is an undated complaint by Jon Serbin, which was apparently received by the Miami office of the Florida Bar on September 4, 1996. **Exhibit B**. For the reasons repeatedly expressed to Ms. Linda Evans, the undersigned has been unable to respond to said complaint, because of his ethical obligation to Linda Serbin and Bess Serbin to maintain their privacy.

10.) That the only client the undersigned has ever represented at all times material to Jon Serbin's complaint was his estranged wife, Linda Serbin. **Composite Exhibit C**.

11.) That Ms. Linda Serbin related to the undersigned on May 7, 1997, that she gave an interview to an investigator from the Miami office of the Florida Bar in April 1996. Ms. Linda Serbin, reported to the undersigned that she told the investigator that she did not wish to proceed with any complaint against the undersigned; that she had no complaint with the undersigned; that the money Jon

Serbin was complaining about was never Jon Serbin's money; that she did not wish the undersigned to respond to the complaint and disclose matters veru private to herself and Bess Serbin; and that she, Linda Serbin, would sign off on a closure of the complaint in this case.

12.) That on May 7, 1997, Ms. Serbin also agreed to forward the attached draft letter to the Florida Bar, after the undersigned was able to secure certain claims of Linda Serbin in the ongoing **Riteway** litigation, which have just been concluded during the past ten (10) days. **Exhibit D**. Ms. Serbin and the undersigned were unable to conclude this matter during the past Yom Kippur holiday, because of Ms. Serbin's busy schedule.

13.) That this Committee has no probable cause to require the invasion of all clients' records, without any complaint from Linda Serbin, who was the only client of the undersigned in the underlying litigation, in **First Union National Bank v. Linda Serbin**, 11th Cir. Case 92-13147-CA-24, which resulted in a settlement with the Plaintiff by closing and sale to avoid foreclosure and is the sole basis of the complaint by Jon Serbin.

14.) That the undersigned has no financial records of Jon Serbin, who at all times relevant to the complaint was not the client of the undersigned and had no claim to the funds he has related in the above referenced complaint.

15.) That the undersigned is confused and unable to respond to

paragraph 1 of the subpoena he is in receipt of, in that Linda Serbin has made no complaint herein and in response to said subpoena would state that there are no joint financial records for the, *Serbins' money* in the possession or control of the undersigned and there has never been any fund, which he or anyone else designated as, *the Serbins' money* and that he is in possession of no moneys belonging at any time to Jon Serbin.

IV.

16.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 11th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of **Mabie v. Garden Street Managment Company**, 397 So.2d 920 (Fla. 1981) and its progeny.

17.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 17th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of **Mabie v. Garden Street Management Company**, 397 So.2d 920 (Fla. 1981) and its progeny.

V.

18.) That the undersigned is confused and unable to respond to paragraph 2 of the subpoena in that it seems to be vague and overbroad in that it seems to request all records for any client, for who or for which the undersigned has ever maintained records since May 1, 1993, although the complaint in this cause is only by Jon Serbin, who was not his client.

VI.

19.) That the undersigned is in good faith responding to the 11I committee with the foregoing reservations and is willing to respond further if required to do so, but would request clarification of the foregoing matters and more definite statement of whose records and what records the committee is seeking and what the basis for that claim is.

20.) That the undersigned hereby adopts all those responses and requests previously filed regarding his desire to maintain the confidences of and privacy of his clients, Linda Serbin and Bess Serbin.

21.) That in any event if the privacy and confidences of Linda Serbin and Bess Serbin must be revealed the undersigned would first request that these matters be revealed **in camera** to avoid harm to Linda Serbin and Bess Serbin, the **only** clients of the undersigned.

22.) That because of the erroneous transfer of this matter to the 17th Circuit and then the return of this cause to the 11th Circuit the undersigned would demand that this cause proceed in the fashion required by the Florida Bar procedures, including but not limited to a response to the request for the undersigned for clarification and explanation to Ms. Evans at the very inception of this matter; and disclosure of the identity of the members of the 11I committee, which may be considering this cause.

WHEREFORE, upon the foregoing the undersigned would request that the Committee or the Court protect against the discovery sought; and/or quash the subpoena served on the undersigned; and cause this file to be closed; and/or that this Committee will further investigate the **ultra vires** act of Elena Evans in causing this matter to be removed from the jurisdiction of the Florida Bar 11I committee and if said 11I committee or the 17I Committee is found to have considered this cause and declined to proceed that this Committee will cause this matter to be dismissed for lack of jurisdiction under the present cause, where the previous Florida Bar 11I Committee(s) declined to proceed as required by **Mabie v. Garden Street Management Company**, 397 So.2d 920 (Fla. 1981) and its progeny and/or that the present Committee would cause a clarified subpoena to be written and the foregoing matters addressed and clarified and thereupon the undersigned will appear and sign for said subpoena.

LAW OFFICES of
CALVIN DAVID FOX, Esq.
P.O. Box 5286
Fort Lauderdale, FL 33310
(305) 839-5035

CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

In Re: A Disciplinary matter conducted under authority of the Rules Regulating The Florida Bar

The Florida Bar File
No. 97-70,300(11I)

Notice of Hearing Before a Grievance Committee

TO:Calvin D. Fox
Tutor-Time, Ste-450
One Park Place
Boca Raton, FL
& PO Box 5286
Fort Lauderdale, FL 33310

Jon Serbin
9241 Collins Ave
Apartment 7
Surfside, FL 33154

DATE: January 20, 1998
TIME: 5:30 p.m.
PLACE: Office of The Florida Bar, 444 Brickell Avenue, Suite M-100, Rivergate Plaza, Miami, FL

SUBJECT: Complaint of Jon Serbin against Calvin D. Fox

Possible violation of Rules 3-4.8, 3-7.11(d)(f) of the Rules of discipline, Rule 4-8.4(g) of the Rules o Professional Conduct and Rule 5-1.2(f) of the Rules Regulating Trust Accounts. You will please take notice that the undersigned Grievance Committee will sit at the time and place mentioned for the purpose o investigating the alleged misconduct stated above. Rule 3-7.4(g) and (h) and 3-7.11(d)(5), as well as portions of Rule 3-7.1 of the Rules o Discipline are printed on page two (2), for your further notice.

You are requested to attend and give testimony. You are also requested to bring with you any and all documents and files in your possession pertaining to the above-captioned complaint.

Pursuant to the requirements of Rule 3-7.4(g), a list of the members of this grievance committee is printed on page two (2).

I **CERTIFY** that the original of the foregoing notice was sent to Calvin D. ox, Respondent, by certified mail (P 092 779 622 and P 092 779 623) return receipt requested and to Jon Serbin, Complainant by certified mail (P 092 779 624) return receipt requested on this 30th day of December, 1997.

Eleventh Judicial Circuit
Grievance Committee 11I

By: _____
ELENA EVANS For the Committee

Rule 3-7.4(g) Rights and responsibilities of the respondent. The Respondent may be required to testify and to produce evidence as any other witness unless the respondent claims a privilege or right properly available to the respondent under applicable federal or state law. The respondent may be accompanied by counsel. At a reasonable time before any finding of probable cause or minor misconduct is made the respondent shall be advised of the conduct which is being investigated and the rules which may have been violated. The respondent shall be provided with all materials considered by the committee and shall be given an opportunity to make a written statement, sworn or unsworn, explaining, refuting, or admitting the alleged misconduct.

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 492108
Fort Lauderdale, Florida 33349
(305) 839-5035

CONFIDENTIAL COMMUNICATION

January 12, 1998

Lawrence N. Freshman, Chairman and
Thomas Karr, Vice Chairman
Care of The Florida Bar
444 Brickell Avenue, Suite M100
Miami, Florida 33131

Gentlemen:

On January 8th I forwarded a request to reset a hearing scheduled by Ms. Evans for January 20, 1998 and another complaint regarding the confidentiality of these proceedings. Please advise as to whether she had provided this documentation to you.

We are most desirous of appearing before the Committee and appreciate this opportunity. However the trial proceedings set in Washington are to commence on January 20, 1998 and will continue through the first week in February. I would request that this matter be reset not earlier than the third week in February.

Your attention to this matter is greatly appreciated. If you have any questions or need additional information, please contact the undersigned.

Very truly yours,
CALVIN DAVID FOX,
Esq.

IN THE SUPREME COURT OF FLORIDA
[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70,300(11I)

THE FLORIDA BAR, by and
through the complaint of
Jon Serbin,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

**NOTICE OF CONFLICT;
MOTION TO RESCHEDULE;
DEMAND FOR COMPLIANCE WITH
CONFIDENTIALITY**

TO: LAWRENCE N. FRESHMAN
Chair, 11th Cir. Judicial Circuit
Grievance Committee [redacted] I[redacted]

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Notice of Conflict; Motion to Reschedule; Demand for Confidentiality and as grounds therefor show:

1.) That the undersigned is in receipt of a notice of hearing in this cause for 5:30 p.m. on January 20, 1998 at 5:30 p.m., which was set without conferring with the undersigned.

NOTICE OF CONFLICT; REQUEST FOR RESCHEDULING

2.) That the undersigned is counsel of record in a previously scheduled trial in Tutor Time Child Care Systems v.

Progeny and Morriss, which is specially set for January 20, 1998 at 9:00 a.m. in Seattle, Washington.

3.) That the undersigned is most desirous of appearing before the Committee and presenting documents and evidence in support of his position in this matter.

4.) That an appearance by the undersigned and the Complainant would be most appropriate for the Committee to reach a just and correct result in this cause.

5.) That this request is made not for purposes of hindrance or delay, but rather only such that this cause may be properly heard on the merits.

DEMAND FOR CONFIDENTIALITY

6.) That in a most bizarre fashion, the Florida Bar employee, Elena Evans, **AGAIN** has caused a document in this proceeding consisting of the attached Notice of said hearing before the Committee to be deliberately forwarded to the undersigned **not at his Florida Bar address**, but rather to the offices of his principal corporate clients. **See Exhibit A**.

7.) Furthermore, Ms. Evans did not restrict delivery to the undersigned and did not mark the envelope that the matter was confidential or only for the undersigned. **See Exhibit A**.

8.) That Ms. Evans intent on this occasion as every previous occasion [e.g. as reflected in the previous response] was to cause the undersigned

embarrassment and personal and professional hardship with his principal corporate clients.

9.) That Ms. Evans in violation of the Florida Bar rules regarding confidentiality of these proceedings has caused the undersigned acute embarrassment and personal and professional hardship with his principal corporate clients.

10.) That the undersigned **again** respectfully demands that all papers, pleadings and things herein be forwarded to his mailing address reflected below throughout these proceedings.

WHEREFORE, upon the foregoing the undersigned would request that the Committee or the Court continue these proceedings to a date later than February 9k, 1997 and require that all papers herein be forwarded to the undersigned at the address below or require that all process be delivered to the undersigned by the undersigned appearing at the offices of the Florida Bar for delivery of such documents.

LAW OFFICES of CALVIN DAVID FOX
PO Box 5286
Fort Lauderdale, FL 33310
CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response; Motion for Clarification; Motion for a Protective Order; and Notice of Address was caused to be faxed on January 8, 1998 to LAWRENCE N. FRESHMAN, Chairman, Eleventh Judicial Circuit Grievance Committee . . .

RESOLUTION OF THE FLORIDA STATE-FEDERAL JUDICIAL COUNCIL REGARDING CALENDAR CONFLICTS BETWEEN STATE AND FEDERAL COURTS

WHEREAS, the great volume of cases filed in the state and federal courts of Florida creates calendar conflicts between the state and federal courts of Florida which should be resolved in a fair, efficient and orderly manner to allow for judicial efficiency and economy; and

WHEREAS, the Florida State-Federal Judicial Council which represents the Bench and Bar of the State of Florida believes that it would be beneficial to formally agree upon and publish recommended procedures and priorities for resolving calendar conflicts between the state and federal courts of Florida;

NOW, THEREFORE, BE IT RESOLVED

In resolving calendar conflicts between the state and federal courts of Florida, the following case priorities should be considered:

1. Criminal cases shall prevail over civil cases.

2. Jury trials shall prevail over non-jury trials.

3. Appellate arguments, hearings and conferences shall prevail over trials.

4. The case which has first commenced shall take precedence.

Where an attorney is scheduled to appear in two courts - trial or appellate, state or federal - at the same time and cannot arrange for other counsel in his or her firm or in the case to represent his or her client's interest, the attorney shall give prompt written notice to opposing counsel, the clerk of each court, and the presiding judge of each case, if known, of the conflict. If the presiding judge of a case cannot be identified, written notice of the conflict shall be given to the chief judge of the court having jurisdiction over the case, or to his or her designee. The judges or their designees shall confer and undertake to avoid the conflict by agreement among themselves. Absent agreement, conflicts should be promptly resolved by the judges or their designees in accordance with the above case priorities.

In jurisdictions where calendar conflicts arise with frequency, it is recommended that each court involved consider appointing a calendar conflict coordinator to assist the judges in resolving calendar conflicts by obtaining information regarding the conflicts and performing such other ministerial duties as directed by the judges.

ADOPTED at Miami, Florida, this 26th day of January, 1985.

THE ELEVENTH JUDICIAL CIRCUIT,
DADE COUNTY, FLORIDA
CASE NO. 90-1
(Court Administration)

IN RE: UNIFORM INTERCIRCUIT)
CONFLICT RESOLUTION PROCEDURES)
ADMINISTRATIVE ORDER NO. 90-30

WHEREAS, it has become necessary to establish a uniform procedure to resolve scheduling conflicts among the various circuits of Florida;

NOW, THEREFORE, pursuant to the authority vested in me as Associate Chief Judge of the Eleventh Judicial Circuit of Florida under Rule 2.050 of the Florida Rules of Judicial Administration, it is hereby

ORDERED as follows:

The judges affected by the intercircuit scheduling conflict shall initially confer and determine priorities, considering such factors as the age of the case, the number of parties and attorneys involved, the estimated time needed for trial, and the availability of witnesses.

The following priorities shall apply in the event that the judges affected cannot resolve an intercircuit scheduling conflict:

1. Appellate proceedings in the District Court of Appeal or the Supreme Court of Florida.

2. Felony trials set pursuant to motion for discharge {Fla.R.Cr.P. 3.191(I)].

3. Misdemeanor trials set pursuant to motion for discharge {Fla.R.Cr.P. 3.191(I)].

4. Capital trials where the death penalty is an issue and hearings on Fla.R.Cr.P. 3.850 motions when the death penalty has been imposed.

5. Noncapital felony jury trials.

6. Misdemeanor jury trials.

7. Civil Jury trials.

8. Civil non-jury trials estimated to last four days or more.

9. Court-ordered mediation and arbitration.

10. Circuit court non-jury trials estimated to last less than four days, including violations of probation or community control under Fla.R.Cr.P. 3.850 motions.

11. County court non-jury trials, including violations of probation.

12. Motions requiring evidentiary hearing.

13. Specially set motions.

14. Other motions of proceedings.

15. Depositions.

It is further established that in cases of equal dignity, the oldest case shall have priority, whereby the date of filing shall determine the age of a case.

Criminal defendants in custody shall have priority over other criminal defendants.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 23rd day of October, 1990.HERBERT M. KLEIN, ASSOCIATE CHIEF JUDGE

IN THE SUPREME COURT OF FLORIDA
[BEFORE A GRIEVANCE COMMITTEE]

CASE NO.

97,70,300(11I)
THE FLORIDA BAR,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

Record of proceedings had and testimony taken before a Grievance Committee at the Offices of the Florida Bar, 444 Brickell Avenue, Miami, Florida 33131, on Tuesday, January 20, 1998, at a session commencing at 6:05 p.m., pursuant to notice.

COMMITTEE MEMBERS PRESENT:
LAWRENCE FRESHMAN, CHAIRMAN
THOMAS CARR
ALLIE MOBLEY

ALSO PRESENT:
THE FLORIDA BAR
BY: ELENA EVANS, ESQ.
Assistant Staff Counsel
444 Brickell Avenue
Miami, Florida 33131
On Behalf of Complainant

JON SERBIN, COMPLAINANT

- - - -

I N D E X

Witness	Direct	Cross
Ms. Linda Serbin (Telephonically)	5	
Mr. Jon Serbin	16	

E X H I B I T S

	Page
Florida Bar Composite Exhibit Number	1-20
Florida Bar Exhibit Number 21	

(Thereupon, the following proceedings were had:)

(Thereupon, the court reporter was duly sworn.)

MS. EVANS:We have Ms. Serbin on the telephone.

Ms. Serbin, please stand by.

My name is Elena Evans. I am Bar Counsel for Grievance Committee 11I.

I do not vote with the Committee.

We are meeting tonight on the cause of the Florida Bar versus Calvin David Fox, Florida Bar File Number 97-70,300(11I).

Present also is:

MR. FRESHMAN: Lawrence Freshman, as the Chair.

MS. EVANS: And an attorney.

MR. CARR: Thomas Carr, an attorney and Vice-Chair.

MS. MOBLEY: Allie Mobley, lay person for the Committee.

MS. EVANS: For the record, the Complainant, Jon Serbin, is also present.

This is set for Mr. Fox's non-compliance with a duly executed Grievance Committee subpoena that was issued by the Chair of this Committee, requesting that Mr. Fox provide his trust account records.

Until this date, none have been provided.

Mr. Fox did try to obtain a continuance of this matter, sending The Florida Bar a letter dated January 17, 1998, claiming that he would produce the records at a later date.

However, his continuance has been denied by the Chair.

We are going to start by taking Ms. Serbin's testimony by phone.

MR. FRESHMAN: I will swear her in.

Ms. Serbin, this is Mr. Freshman.

Before testifying, I would like to ask you to take an oath.

If you believe that criminal activity was involved, you should discuss the facts involving your testimony with the appropriate Federal and State prosecuting authorities.

With this in mind, do you solemnly swear or affirm that the testimony you will give in these proceedings will be the truth, the whole truth and nothing but the truth?

MS. SERBIN: I do.

MS. EVANS: Ms. Serbin, in this matter, did you hire Mr. Fox at any time?

MS. SERBIN: I can't say hire. I can say that he volunteered to help.

MS. EVANS: is it your position that you have asked Mr. Fox for an accounting of any funds that he may have recovered on your behalf?

MS. SERBIN: I asked him to return the deposit that he was holding.

MS. EVANS: has he returned any funds to you?

MS. SERBIN: Not to date.

MS. EVANS: Has he given you an accounting of those funds?

MS. SERBIN: No, he hasn't. He did give some of the money that he was holding in the beginning.

MS. EVANS: do you know how much he is holding?

MS. SERBIN: I believe in the beginning, he gave $700 and maybe another $1,000 after that.

MS. EVANS: Do you have any idea how much more you are due?

MS. SERBIN: He had $25,000 to begin with.

MS. EVANS: Does anybody else have any other questions of Ms. Serbin?

MR. FRESHMAN: Yes.

This is Mr. Freshman again.

The $25,000, was there ever an attorney fee involved in that $25,000? Was it your understanding that he was to receive a fee from that $25,000?

MS. SERBIN: No.

MR. FRESHMAN: What was your understanding of why he was holding the $25,000 for you, ma'am?

MS. SERBIN: At the time, he just thought it was best that he hold it in his account.

MR. FRESHMAN: How long ago was that?

MS. SERBIN: That was when we sold the house. I believe that was in 1992.

You have to ask Jon. I think it was in the spring of 1992.

MR. FRESHMAN: When did you ask him for the money back?

MS. SERBIN: I have been asking him all along for the money back.

MR. FRESHMAN: Let's start with the spring of 1992. When would have been the first time that you asked him for your money back?

MS. SERBIN: That is how we got the $7,000 to begin with, because we needed money to move. At that time, he gave us the $7,000.

MR. FRESHMAN: When he gave you the $7,000 and did not give you the $25,000 that he was holding for you, what conversation did you have with him?

MS. SERBIN: He said that the money is safe with him and whenever I wanted it, I could get it.

MR. FRESHMAN: Was there some reason why he felt that you weren't old enough or wise enough to take the full $25,000?

MS. SERBIN: No.

MR. FRESHMAN: Did you ever give him the feeling that you wanted him to hold it in safekeeping in any regard?

MS. SERBIN: In the beginning, he felt that would be best.

MR. FRESHMAN: I'm not asking you what he thought. I'm asking you what you thought.

Why did you feel that he should hold your money? For what reason?

MS. SERBIN: He didn't give me a reason.

MR. FRESHMAN: Did you have any reason why you wanted him to hold it?

MS. SERBIN: No.

MR. FRESHMAN: After the $7,000 was given to you, when was the next time that you asked for money?

MS. SERBIN: I guess I asked him in September.

MR. FRESHMAN: What did he tell you?

MS. SERBIN: No, it never was convenient.

MR. FRESHMAN: Excuse me. I didn't understand. What do you mean it's not convenient?

MS. SERBIN: He said it wasn't convenient, that he would give it to me, in other words, he always made some excuse why not to give me the money.

MR. FRESHMAN: Did you ever consult an attorney in order to sue him to get your money back?

MS. SERBIN: No, not until my husband brought this suit.

MR. FRESHMAN: How come you didn't bring it?

MS. SERBIN: Well, I didn't want to get anybody in trouble.

He was nice enough to take the case to begin with, I figured. It was a case of hardship and whatever, and I just don't like someone to get wronged because he tried to help.

MR. FRESHMAN: I am having a little trouble understanding.

What hardship is there? Did he ever tell you that he had taken your money?

MS. SERBIN: No, he never said that he took my money.

MR. FRESHMAN: So what hardship was there? I still don't understand that.

I understand you gave him the money that he was holding for you, approximately $18,000.

MS. SERBIN: Right.

MR. FRESHMAN: Did you ask for the last. .

MS. SERBIN: No, he kept stressing the point to get the $25,000 more owed to us by a realtor.

MR. FRESHMAN: What does that have to do with this $18,000?

MS. SERBIN: Nothing, actually, but he kept talking about that, instead of the escrowed money from the original $25,000.

MR. FRESHMAN: When was the last time you talked to Mr. Fox in relationship to getting back your $18,000 that remained?

MS. SERBIN: I think that was last Friday.

MR. FRESHMAN: Can you tell me the sum and substance of that conversation, please?

MS. SERBIN: Sure. I told him to. . he called me that he was worried about this case and whatever.

I said to him, It seems to me that the case centers around the escrow funds. If you would produce the escrow funds, there would be no need to have this hearing. In order to make an estoppel for the case, what you really need to do is come up with the money.

MR. FRESHMAN: What did he say?

MS. SERBIN: He said he is very worried about it and he is not going to be in town or whatever. That's all.

MR. FRESHMAN: But he never offered to give you the money?

MS. SERBIN: No.

MR. FRESHMAN: I have no other questions.

MR. CARR: I have one or two.

How did he come to get the $25,000 in the first place?

MR. FRESHMAN: Did you hear that?

MS. SERBIN: Not clearly.

MR. CARR: My name is Tom Carr. I am the Vice-Chair of the Committee.

Will you please answer for me, how did he come to get the $25,000 in the first place?

MS. SERBIN: He was helping me with the sale of my house. I had a very hard time with the sale of our home. Our house was being foreclosed and whatever.

He was like representing both Jon and I at that particular time; mainly me.

He said he would put the money in his account.

MR. CARR: And you gave him the $25,000?

MS. SERBIN: No, I did not give it to him.

What happened was that the realty people gave it to him and I never saw the check for the $25,000.

MR. FRESHMAN: That was at a closing?

MS. SERBIN: It was probably right before the closing.

What happened was that we needed money to move. They gave us a certain

amount of deposit money. The realtor was holding that said money.

They released $25,000 of it. Therefore, I didn't see the check. Jon didn't see the check. Calvin saw the check and put it in his account.

MR. CARR: Have you ever seen a copy of that check?

MS. SERBIN: I don't believe so.

MR. CARR: Do you know whether or not he ever received the $25,000?

MS. SERBIN: Oh, yes, definitely.

MR. CARR: Why do you know that?

MS. SERBIN: I know that for sure because he gave me $7,000 of it and it has been proven that the realtor did give us $25,000 of the said deposit.

Maybe Jon has a copy of the check. I don't know.

MR. FRESHMAN: Does anybody else have any questions?

MS. MOBLEY: This is Allie Mobley, ma'am.

What month was it that he gave you the $7,000?

MS. SERBIN: I believe we moved in June of 1992. Jon would know exactly.

MS. MOBLEY: Did you give the realtor permission to give Mr. Fox the $25,000?

MS. SERBIN: Did I give the realtor?

MS. MOBLEY: Yes. Did you give the realtor permission to give Mr. Fox $25,000 of your money?

MS. SERBIN: No, I don't remember that. I don't think I would give anybody permission to take my money like that.

The thing was that I wasn't given the money in my hand. If I was given the money in my hand, nobody would have gotten it.

That's how they released the money. They released the money to Mr. Fox.

MS. MOBLEY: Did the money belong to both you and your husband?

MS. SERBIN: The money belonged to both of us.

MS. MOBLEY: Neither one of you gave permission to give it to him?

MS. SERBIN: No.

MS. EVANS: Do you have anything else?

MS. MOBLEY: No.

MS. EVANS: Ms. Serbin, thank you for your testimony. We are going to continue without you, because we understand that you are going to class now, is that correct?

MS. SERBIN: Right. I have a class at North Miami High School.

MS. EVANS: We thank you for testifying.

MS. SERBIN: I will keep my mobile phone on in case you need me for anything else.

MR. FRESHMAN: Thank you very much.

(Thereupon, the telephone communication with Ms. Serbin was terminated.)

MS. EVANS: For the record, Mr. Fox is not present. He has told both myself

and Mr. Freshman that he is in the State of Washington.

Also for the record, I move into evidence the packet that was given to both the Respondent and all of the Grievance Committee members, which is the Florida Bar Composite Exhibits numbered One through Twenty of this case.

In addition, I have made copies of Mr. Fox's January 17, 1998 letter to Elena Evans of The Florida Bar, requesting a continuance until February 15, 1998, to produce his records.

Do you have any questions for Mr. Serbin?

MR. FRESHMAN: We can go through it.

Mr. Serbin, you heard your wife just testify.

MS. EVANS: Did you swear him in?

MR. FRESHMAN: Mr. Serbin, before testifying, I will ask you to take an oath.

If you believe that criminal activity was involved, you should discuss the facts involving your testimony with the appropriate Federal or State prosecuting authorities.

With that in mind, do you solemnly swear or affirm that the testimony you will give in these proceedings will be the truth, the whole truth and nothing but the truth?

MR. SERBIN: I do.

MR. FRESHMAN: Now we can start.

MS. EVANS: Mr. Serbin, you filed a complaint with the Florida Bar against Mr. Fox?

MR. SERBIN: Correct.

MS. EVANS: Can you tell us in very brief form, because the Committee does have your complaint, why you filed the complaint? What is your complaint against Mr. Fox?

MR. SERBIN: I had two complaints. The first part was the fact that he had been holding our money at that point for three and a half years, refusing to release it and refusing to return phone calls.

The second is that at the same time we were in the process of trying to get the balance. . it was actually an escrow deposit that was turned over to us involving a misrepresentation in real estate, and we were trying to get the other half of the money, which Riteway Realty had not released to us.

We were suing them for that and he was handling that also.

The balance of my complaint was that he wasn't responding by doing anything on our case for that.

MS. EVANS: Did you agree to pay him a fee of any sort for his representation?

MR. SERBIN: No.

when the first $25,000 was turned over to him, that left $25,000 and it ended up a forfeited deposit.

Half of that was released to us by the listing realtor, New Wave Realty, but Riteway never released it.

We were arguing over the balance. It was in dispute. Riteway never reported the dispute to the Florida Real Estate Commission. They never reported it because the broker for New Wave would

have testified that because of the misrepresentation, we were entitled to all of it.

Then Riteway turned around. . because they had plenty of money, and sued us not only for the $12,500 that was in dispute; they sued us to recover the $12,500 that had been released to us from New Wave Realty.

We had no money for an attorney. Calvin said, I will take it on a volunteer basis . .not a volunteer basis. The way I make my living, when people do something wrong, I sue them and get the attorney's fees from them. So I will take your case and I will get you the $25,000.

We had suffered substantial damages. We actually sold our house the day before it was to be auctioned off at about seventy-five percent of what it was assessed at.

He said, and I will get my attorney's fees.

since that time, the only deposition taken in the case was taken by their lawyers. He never took a deposition or progressed to trial.

It appeared to me that all he was doing was trying to . .and at one point, he said . . he gave a lot of excuses for not releasing the money.

One of the excuses was that Riteway was making a claim on the money which they had released.

There was some credence to that because they had also sued us for the money that had been released to us by New Wave. They were still hanging on to that.

MS. EVANS: Did he ever send a bill to you for his services or at least the detail of what he had . .

MR. SERBIN: No. After I filed my complaint, my wife got a bill for $20,000 for a time up to . . I don't know . . 1994 or something, and then a bill for $25,000 subsequent to that. It just came in, period.

MS. EVANS: Was it detailed, broken down?

MR. SERBIN: No, that's what it said, $20,000 . .

MS. EVANS: Do you have a copy of it?

MR. SERBIN: Yes. I have to dig it out, but I will find it.

MS. EVANS: While you are looking for it, if anyone else has any questions . .

MR. CARR: Did you enter into any kind of a fee agreement with him, a written fee agreement?

MR. SERBIN: No. The understanding was that he would get his attorney's fees from Riteway.

They ended up suing us and we had a counter suit, but that's another story. No, there was no fee agreement.

MR. CARR: What happened with the lawsuit?

MR. SERBIN: It's been going on for four and a half years.

We finally, I think based on my deposition taken by their attorneys that had none of the real facts in the case, got a summary judgment, in our favor but they are still not releasing the money.

MS. EVANS: That's the other $25,000?

MR. SERBIN: that's correct.

MS. EVANS: So there was a $50,000 deposit and $25,000 of it went right away to Mr. Fox?

MR. SERBIN: Correct.

MR. FRESHMAN: Did Mr. Fox file a summary judgment in your case?

MR. SERBIN: He handled all the trial work, trying to fend off their attempt to take all the money, yes, he did.

MS. MOBLEY: So you ended up forfeiting $25,000?

MR. SERBIN: No. There was originally a $50,000 deposit. Twenty-five thousand dollars was turned over to them and $25,000 Riteway never gave the money to us.

They didn't give us the $12,500 released to us by New Wave Realty and they claimed that they were entitled to all of the $25,000, including the $12,500 that we were disputing, which we were contending that they weren't entitled to because of the misrepresentation.

MS. MOBLEY: So you got $12,500 from one person and $7,000 from Fox?

I am just trying to understand exactly how much . .

MR. SERBIN: No, we never got the money.

The $12,500 released to us, Riteway kept themselves. They never put it even with the Registry of the Court, so there was no way to get the money when we got the judgment.

MR. FRESHMAN: You are making it confusing. Let's do it this way.

Mr. Fox, we understand, received $25,000 on your behalf, you and your wife?

MR. SERBIN: Correct.

MR. FRESHMAN: What was that $25,000 for? Nice and Simple.

MR. SERBIN: That was part of the misrepresentation.

MR. FRESHMAN: How much was the total deposit?

MR. SERBIN: Fifty thousand dollars. $25,000 was to keep the contract alive because they wanted to buy it on the Courthouse steps.

MR. FRESHMAN: So $25,000 was released and $25,000 was in dispute, is that correct?

MR. SERBIN: Well, as far as I am concerned, $12,500 of the $25,000 was in dispute. It was litigated over.

MR. FRESHMAN: Twenty-five thousand dollars was not discussed. The only thing that was litigated over was the additional $25,000, whether t was $12,500 or $25,000?

MR. SERBIN: Correct.

MR. FRESHMAN: That case is still going on. But the $25,000 that we are talking about here was given to Mr. Fox. That's not in dispute?

MR. SERBIN: No.

MS. EVANS: Out of the $25,000, he released $7,000 in 1992?

MR. SERBIN: It was actually 1993, yes.

MR. FRESHMAN: I don't have any other questions.

Does anybody else have any questions?

MR. CARR: I have a couple of quick questions.

Mr. Fox has represented you and your wife in the litigation to collect the $25,000 in dispute?

MR. SERBIN: Correct.

MR. CARR: Is he still representing you and your wife in the lawsuit?

MR. SERBIN: I can't get anyone else to represent us, so technically, yes.

MR. CARR: The bill that he submitted to you that you are looking for, is that for the work that he had done on the litigation matter that he was handling for you?

MR. SERBIN: Twenty-five thousand dollars of the $45,000 was, yes.

MS. EVANS: Why does he say that he is not your attorney?

MR. SERBIN: I never engaged him. I guess to file the papers he had to file in court, he had to say that he represented me.

MS. MOBLEY: Who is the bill made out to?

MR. SERBIN: My wife.

MS. EVANS: That's why I am asking you.

Why does he always say that Linda Serbin is his client and not you? Is there a reason for that, other than this complaint?

MR. SERBIN: No. He never wanted anything to do with me unless he needed information for the case from me and I would pass it to him through my wife.

MS. EVANS: If we looked at the court documents, he filed on behalf of you and your wife?

MR. SERBIN: I would think so.

MS. EVANS: You haven't seen them?

MR. SERBIN: I should say yes. He never sent us any documents, so I had to go to court to see them.

MR. CARR: Did he forward copies of the papers that he filed in court to you or your wife?

MR. SERBIN: He never sent us anything.

MR. CARR: How did he get you the copies of those papers?

MR. SERBIN: From time to time, he did . .

This, I think he sent right after I filed the complaint (handling).

One time, he faxed me material to deliver to the court because there was going to be a judgment against us. He had me file the papers with the court because my office is across the street.

Those are the first papers I got.

When this case was going on and we got the final judgment, he sent some papers over, but the case is like this (indicating).

He was asked at that time to take the $25,000 and put it . . when he told us that Riteway was disputing releasing it . .put it in an interest bearing account because it's a lot of money.

I told him to send us copies of anything filed with the court.

Other than papers that he had to send us for a specific purpose, we wouldn't hear . .he wouldn't return a call for three months, six months.

He never had an office. He never had a phone number. We only communicated through a voice mail number or a post office box. Until he got this address in Boca, he never had an address.

MS. EVANS: I don't have any further questions.

For the record, Mr. Serbin has provided us with a copy of what looks like an invoice from Calvin D. Fox dated October 1, 1996 to Linda Serbin for an amount due of $35,000, which I will make as Florida Bar Exhibit Twenty-One, and I will make copies of it.

MR. SERBIN: Here is another one that is twenty and twenty-five.

MR. CARR: Mr. Serbin, you say your office is cross the street from the Dade County Courthouse?

MR. SERBIN: No. It ended up being filed in the Beach Court because that's where everybody was.

MR. CARR: What do you do for a living?

MR. SERBIN: I am a realtor.

MS. EVANS: Since we don't have any further questions, Mr. Serbin, we are going to break and go into executive session, where the Committee is going to discuss this and vote.

If you find them, you can give them to me.

If you wait for me two minutes so that I can make copies of this before you leave, I will give the original back to you.

MR. SERBIN: Okay.

MR. EVANS: Thank you.

(Thereupon, the Committee went into Executive Session.)

(After Executive Session, the following proceedings were had:)

MR. CARR: Grievance Committee (11I) has found unanimously that good cause did not exist for Respondent's failure to comply with a properly issued and duly served Grievance Committee subpoena.

The Grievance Committee determined that findings shall issue to that effect and as to Respondent's non-compliance with the subpoena.

(Thereupon, the proceedings were concluded at 6:30 p.m.)

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CERTIFICATE OF REPORTER

I, RITA BERNSTEIN, do hereby certify that I reported the foregoing hearing at the time and place hereinafter set forth, and that the foregoing pages numbered from 1 to 28, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings at said hearing.

WITNESS MY HAND at Miami, Dade County, Florida, this 17th day of June, 1998.

_____

RITA BERNSTEIN

IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,484
Bar Case 97,70,300 (11I)

THE FLORIDA BAR, by and
through the complaint of
Jon Serbin,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

VERIFIED RESPONSE TO PETITION, ENTITLED NOTICE OF NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA

COMES NOW, The Respondent, CALVIN DAVID FOX, and submits this Verified Response to Petition entitled, Notice of Noncompliance with a Grievance Committee Subpoena, to wit:

That on **March 6, 1998** the Respondent, CALVIN DAVID FOX, received notice from this Court of the filing of a Petition entitled, Notice of Noncompliance with a Grievance Committee Subpoena. In said Petition, the Petitioner, THE FLORIDA BAR [The BAR], complains that the undersigned did not appear on **January 20, 1992** (sic) before a 11th Circuit Grievance Committee to produce financial records and testify or show good cause:

I.

STATEMENT OF THE CASE

A.) COMPLAINING WITNESS, JON SERBIN, WAS NOT A CLIENT

The BAR's proceeding herein its inception up to and including the present time is without probable cause in that it is entirely based upon the sole complaint of JON SERBIN [the HUSBAND]. Exhibit 1. The complaint of JON SERBIN is based upon an initial sum of funds received on June 8, 1993 arising from the forced sale of the martial home in First Union National Bank v. John T. Serbin and Linda A. Serbin, 11th Cir. Case No. 92-13147-CA-24.

As reflected herein, the undersigned in good faith has responded to the BAR SEVEN (7) times indicating at all times his great desire to cooperate and to provide all records, but reciting FOUR (4) times that JON SERBIN [the HUSBAND] was not his client and that LINDA SERBIN [the WIFE] has not made any complaint herein[1]. See, Exhibits 2 to 8, attached

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[1] Attached to handwritten letters by JON SERBIN to the 17th Circuit Committee is a typewritten letter dated May 26, 1997. Exhibit 9. This document was not received by the undersigned until about January 6, 1998 with documents, which the BAR said the 11th Circuit Grievance Committee would review on January 20, 1998. LINDA SERBIN stated to the undersigned on March 3, 1998 that she has never signed any document nor complaint herein and that the signature on said May 26th letter was not hers. Compare, Exhibit 10. The undersigned is greatly familiar with LINDA SERBIN's particular and unique signature and the signature on the belated Exhibit 9, is not LINDA SERBIN's signature. See, Exhibit 10.

hereto. The WIFE has specifically directed the undersigned not to disclose attorney/client matters, which are greatly relevant to his defense of this cause. **See, id.** At the same time, THE WIFE has also refused to make any complaint against the undersigned and has not signed any complaint against the undersigned. THE WIFE also refused to appear at the disputed hearing set by the BAR on **January 20, 1998**.

B.) UNDERLYING FACTS

In October 1992 LINDA S. SERBIN [the WIFE], who was very close with the undersigned, consulted with the undersigned for a divorce and other proceedings against the complaining witness JON SERBIN. Additionally she sought the services of the undersigned in defending against the forced sale of the WIFE's residence in **First Union Bank v. Jon T. Serbin and Linda A. Serbin,** 11th Cir. Case 92-13147-CA-24. Because of gross personal and legal conflicts between the WIFE and JON SERBIN in **First Union Bank v. Serbin**, after December 7, 1992 the HUSBAND was represented separately by Attorney Ira Gordon. **E.g.,** Exhibit C, attached to **Exhibits 4 and 5** (Third and Fourth Responses herein). As clearly reflected in Exhibit C attached to both **Exhibit 4** and **Exhibit 5** appended hereto, there were also palpable conflicts of interest between the HUSBAND and LINDA SERBIN arising from LINDA SERBIN's lack of counsel prior to signing away her rights to her home in a document solicited by the Bank and the HUSBAND. **See, id.**

The undersigned has at no time represented the HUSBAND in any matter

regarding or related to **First Union Bank v. Serbin** or the WIFE's funds received therein and no contract paper or agreement herein establishes otherwise. Furthermore, any funds recovered in or relating to the forced sale of the WIFE's house were solely and at all times the exclusive property of the WIFE.

C.) THE 17TH CIRCUIT COMMITTEE SUBPOENA

As reflected in the BAR's initial letters and the First Response and Second responses of the undersigned, this cause was commenced under the foregoing Florida Bar case number in the 11th Judicial Circuit. **See, Exhibit 2** (First Response); **Exhibit 3** (Second Response). After receiving the foregoing First and Second Responses of the undersigned, the 11th Circuit Grievance Committee may have declined to act upon the complaint of JON SERBIN. However, rather than letting this matter rest upon that result, the BAR may have begun shopping for another Committee, because this cause was then transferred to the BAR's 17th Judicial Circuit Grievance Committee.

On **May 2, 1997** based upon JON SERBIN's complaint the 17th Circuit Grievance Committee caused a subpoena to be served. **See, Exhibit 11.** Upon receipt of **exhibit 4**, the Response and documentation from the undersigned, the 17th Circuit Grievance Committee declined to act and set this cause Back to the BAR's counsel, Ms. Evans in Miami. **See, Exhibit 12.**

D.) THE ELEVENTH CIRCUIT SUBPOENA

Sometime after this cause was transferred back to Miami, on **September 22, 1997** the 11th Circuit Committee caused a subpoena to be served. **Exhibit**

13. It is undisputed that after receipt and review of **Exhibit 5**, the Response and documentation from the undersigned, the 11th Circuit Grievance Committee, instructed its Chairman and the BAR's counsel to convene a hearing on **January 20, 1998** for the undersigned to appear and provide documentation; **and** for JON SERBIN to appear and testify. **See, Exhibit 14**.

E.) THE JANUARY 20, 1998 HEARING: MISLEADING REPORT OF CHAIRMAN

On **December 31, 1997** the BAR forwarded a Notice of Hearing, not to the Florida Bar address of the undersigned, but rather to the corporate offices of a major client of the undersigned. **See, Exhibit 14.** This caused severe prejudice to the undersigned with his client.

Upon receipt of said Notice and after confirming would not be abated, on **January 8, 1998** in a formal document not provided to this Court in the BAR's petition herein, the undersigned notified the BAR and Chairman, LAWRENCE N. FRESHMAN, that the undersigned had a patent conflict in a matter, which had precedence under the conflict rules of the jurisdiction. **Exhibit 6** (Fifth Response and exhibits). This document was forwarded by facsimile to both Mr. Freshman and the BAR to insure its prompt delivery. **Id.** The conflict, which the undersigned reported was a previously scheduled trial, in **Robert Morriss v. Tutor Time Child Care Systems**, American Arbitration Case 75-114-0166-97 commencing at 9:00 a.m. on January 20, 1998 in Seattle, Washington. **See, Exhibit 15** (itinerary; plane ticket; rental car and hotel receipt). In the

report oft he conflict, the undersigned expressed the foregoing good faith and specific intent:

> 3.) That the undersigned is most desirous of appearing before the Committee and presenting documents and evidence in support of his position in this matter.
> 4.) That an appearance by the undersigned and the complainant would be most appropriate for the Committee to reach a just and correct result.

Exhibit 6, p.3.

On **January 12, 1998,** when the undersigned had not received any response from either Ms. Evans or Chairman FRESHMAN, the undersigned again notified FRESHMAN and Ms. Evans of the conflict presented by the previously scheduled trial in **Morriss v. Tutor Time Child Care Systems, Inc. Exhibit 7**. Said Notice has apparently also **not** been provided to this Court in the BAR's present petition. Said January 12th notice was also forwarded by facsimile to both FRESHMAN and Ms. Evans at the BAR's offices in order to insure its prompt delivery. In said January 8th response the undersigned indicated the following good faith and specific intent:

> We are most desirous of appearing before the Committee and appreciate this opportunity. However the trial proceedings set in Washington are to commence on January 20, 1998 . . .
> **Exhibit 7**.

In order to assure that the foregoing Notices were received and acted upon, on **Thursday, January 15th, 1998**, the undersigned contacted the BAR's counsel, ELENA EVANS by telephone. Ms. Evans informed the undersigned that FRESHMAN, **in his discretion** had refused to reschedule the January 20th hearing. No information was requested by Ms. Evans and no reason was offered by Ms. Evans for FRESHMAN's refusal to reschedule the January 20th hearing other than FRESHMAN had the discretion to refuse to reschedule the January 20th hearing. On **January 16th** the undersigned again attempted to contact the BAR's counsel, but was successful in only speaking with her secretary and indicating that the undersigned was desirous of producing documents. **Exhibit 8.**

On or about Tuesday, January 27, 1998, **after** the undersigned returned from his trial in Washington, the undersigned received a letter from FRESHMAN indicating that FRESHMAN had received the January 12th Notice of conflict letter from the undersigned. **Exhibit 16**. In said letter FRESHMAN recites that he called, but does not say that he left any message and he says that the undersigned should give FRESHMAN, *additional information*:

> Receipt is hereby acknowledge of your letter dated January 12th. However, when I attempted to contact you to discuss the contents of your letter, I got an answering machine.
>
> In any event, I cannot reset the hearing on January 20th unless you provide me additional information.

> Therefore, please contact me to discuss the matter.

Exhibit 16.

In his report entitled, Findings of Grievance Committee I of the Eleventh Judicial Circuit as to Non-Compliance with a Subpoena, FRESHMAN attempts to mislead this Court and the BAR with the following statement implying that FRESHMAN had actually communicated with t undersigned and the undersigned had **REFUSED** to cooperate after being told more information was required:

> The Chairman of Grievance Committee I **asked** Respondent for details concerning Respondent's unavailability. **Respondent failed to provide any details**. [Emphasis added].

Although FRESHMAN's letter is coy about the issue, FRESHMAN did **not** leave any message if he did actually call.[2] Why FRESHMAN would not leave a message in this era of e-mail; voice mail and electronic communications is nonsensical. Furthermore, the undersigned has never spoken directly with FRESHMAN about

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[2] At or **before** the January 20th hearing, the undersigned also would have inquired as to a conflict of interest against FRESHMAN regarding a previous claim of fraud and misconduct filed by the undersigned, which may have been against FRESHMAN and his firm. There may be other conflicts of interest regarding other members of the Committee as listed. **See, Exhibit 6** (at list of Committee members). The opportunity to addresses these issues was not allowed in this circumstance.

anything. The suggestion that the undersigned had **refused** to provide information, is therefore **patently** false.

Furthermore, the foregoing report by FRESHMAN of an alleged refusal to cooperate, is inconsistent with every document and response filed by the undersigned in these proceedings. The alleged deliberate refusal to cooperate about a matter, which would only assist in facilitating the request of the undersigned with his desire to appear before the committee defies all common sense.

The undersigned submits that the foregoing report of the Committee is a materially false representation by FRESHMAN to the Grievance Committee; to the BAR and to this Court and is designed to corrupt these proceedings; to mislead this Court; and to deny the undersigned due process and his right to be heard in a matter, which is obviously controvertable.

After receipt of this Court's notice on March 6, 1998, and the BAR's petition herein, this Response follows.

II.
ARGUMENT

A.) CONFLICT ORDERS ARE BINDING

The trial in Seattle, Washington, which the undersigned had to attend on January 20, 1998 at 9:00 a.m. was caused because of a demand for arbitration filed by the client of the undersigned in the United States District Court for the Southern District of Florida. In the Joint State-Federal Judicial Council resolution entitled, RESOLUTION OF THE FLORIDA STATE-FEDERAL JUDICIAL COUNCIL

REGARDING CALENDAR CONFLICTS BETWEEN STATE AND FEDERAL COURTS, the previously scheduled trial in a federal court arbitration, which is, first to commence, manifestly took precedence over the administrative hearing set by the 11th Circuit Grievance Committee herein on January 20th. **See, Exhibit 17** (Conflicts Resolution by Florida State-Federal Judicial Council).

Furthermore, 11th Circuit Administrative Order 93-64, entitled, IN RE: UNIFORM INTER/INTRA CIRCUIT CONFLICT RESOLUTION PROCEDURE, specifically provides that trial proceedings of any nature and arbitration proceedings shall take precedence over any other type of proceeding. **See EXHIBIT 18.**

Sub judice, under either the foregoing Florida State-Federal resolution, or Administrative Order 93-64 of the Florida Eleventh Circuit, Chairman FRESHMAN did not have, **discretion** to deny the request of the undersigned to reschedule the January 20th hearing because of the conflict with the trial proceeding in **Morriss v. Tutor Time Child Care Systems** in Seattle, Washington. This Court should therefore deny the BAR's petition and dismiss this cause, or remand to reschedule the January 20th hearing.

Furthermore, FRESHMAN's representation to this Court, the BAR and the 11th Circuit Grievance Committee that the undersigned had, **refused** to provide any additional information regarding the conflict with the trial proceeding in **Morriss v. Tutor Time Child Care Proceedings** is utterly false and

inconsistent with the affirmative good faith and stated intent of the undersigned welcoming the opportunity to appear before the Grievance Committee. There was grossly inadequate communication of FRESHMAN's alleged need for further unspecified information regarding the conflict, which the undersigned had not already conveyed. Furthermore, as reflected in **Exhibit 15** and information already supplied by the undersigned the conflict existed and the trial proceeding in Seattle manifestly took precedence.

B.) NO PROBABLE CAUSE TO PROCEED.

Furthermore in this case, the undersigned is on the horns of a dilemma, which he has expressed in each of seven (7) responses herein. There is no complaint herein upon any basis from his client, LINDA A. SERBIN. Furthermore, in direct discussion with the undersigned, up to and including March 3, 1998, LINDA A. SERBIN, has denied making any complaint and has reiterated that she does not wish to proceed upon any matter herein. Furthermore, even at the BAR's invitation, she refused to appear on January 20th at the hearing scheduled in this cause.

In order to properly defend this cause against JON SERBIN, the undersigned would have to disclose privileged and greatly confidential matters, which are injurious to LINDA A. SERBIN and others in her family, which Ms. SERBIN confided to the undersigned and which she has specifically declined to allow the undersigned to reveal. It is submitted that the BAR cannot by force or threats cause the undersigned to breach said

confidences, and force him into an adversary position with regard to LINDA SERBIN, where the only client to the undersigned, LINDA A. SERBIN, has made no complaint in this matter.

C.) NO JURISDICTION.

Finally, it appears in this cause that up to two prior Grievance Committees may have assumed jurisdiction herein and declined to take action in this cause, based upon the fact that there is utterly no relevant evidence that JON SERBIN was the client of the undersigned. If a previous Grievance Committee had assumed jurisdiction of this cause and declined to act, the present Grievance Committee does not have jurisdiction to proceed herein under the specific holding of Mabie v. Garden Street Management, 397 So.2d 920 (Fla. 1981) and related decisions.

D.) CONCLUSION.

In the present circumstances, the BAR and FRESHMAN should not be allowed to engage in a witch hunt, rummaging through the life of the undersigned and destroying his client relationships, based solely upon the complaint of JON SERBIN, who is an alcoholic and psychotic; who admits he has no right to claim any funds from the forced sale of the WIFE's home; who has committed unspeakable acts against the clients of the undersigned, who have not made any complaints and the WIFE has told the BAR that she doesn't wish to proceed and has declined to appear or cooperate with the BAR.

The summary remedy sought by the BAR herein is a brutal, life and career

destroying remedy, which this Court should not allow the BAR to wield in the face of the foregoing verified circumstances. Indeed, **at a minimum** as reflected the record of Grievance Committee reviews it is wholly apparent on the face of the record that there is a legitimate controversy herein requiring **at least** due process and a hearing. This Court should not therefore allow such a drastic remedy in the present circumstance.

III.
CERTIFICATION

I HEREBY CERTIFY, that the foregoing is true and correct under penalty of perjury, within the meaning and intent of Title 28 United States Code Section 146.

CALVIN DAVID FOX
Dated: March 12, 1998

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SUPREME COURT OF FLORIDA

WHEREAS, it officially has been made known to me that it is necessary to appoint a referee for the Court pursuant to rule 3-7.6(a), Rules Regulating The Florida Bar, to preside in a disciplinary action brought by The Florida Bar pursuant to Chapter 3 of the Rules Regulating The Florida Bar in the matter of:

The Florida Bar v. Calvin D. Fox,
Supreme Court Case No. 92,484;

NOW, THEREFORE, I, Gerald Kogan, under authority vested in me as Chief Justice of the Supreme Court of Florida, do hereby designate The Honorable Joseph P. Farina, Chief Judge of the Eleventh Judicial Circuit Court of Florida, to appoint a referee for the Court in the above matter and, within fourteen days of this order, to notify the Clerk of the Florida Supreme Court as to the judge appointed as referee. The referee shall hear, conduct, try, and determine the matters presented and thereafter shall submit findings of fact and recommendations to the Supreme Court of Florida as provided in rule 3-7.6(k). Except in cases where the 90-day time limit provided by rule 3-5.2(f) applies, the referee's report shall be filed within 180 days of the date of this order, unless there are substantial reasons requiring delay.

DONE AND ORDERED at Tallahassee, Florida, on March 25, 1998.

Chief Justice
Supreme Court of Florida

IN THE SUPREME COURT OF FLORIDA

The Florida Bar,
Complainant,

vs. Supreme Court Case No. 92,484

Calvin D. Fox
Respondent.
_____/

WHEREAS, the Chief Justice of the Supreme Court of Florida has designated the undersigned Chief Judge of the Eleventh Judicial Circuit of Florida to appoint a referee for the Court in the above captioned matter.

NOW, THEREFORE, the undersigned Chief Judge of the Eleventh Judicial Circuit of Florida does hereby appoint the Honorable **Paul Siegel**, Circuit Judge, to serve as a referee pursuant to Chapter 3 of the Rules Regulating The Florida Bar in the matter of:

The Florida Bar v. Calvin D. Fox
Supreme Court Case No. 92,484

ORDERED, at Miami Dade County, Florida this 2 day of April, 1998.

Joseph P. Farina
Chief Judge
Eleventh Judicial Circuit

Law Offices of
Calvin David Fox

July 20, 1998

Gregg D. Wenzel
Assistant Staff Counsel
The Florida Bar
Suite M-100
444 Brickell Avenue
Miami, Florida 33126

RE: **Florida Bar v. Calvin David Fox**
Sup. Case No. 92,484
Fla. Bar Case 97-70,300(11I)

Dear Gregg:

On this date I received the Re-notice of Hearing filed by your office resetting the above referenced case for **July 31, 1998 at 1:30 p.m.** If you had conferred with me before resetting this matter, I could have examined my schedule for clear dates. I have a pre-existing, previously scheduled conflict on the July 31st date.

I would request that this matter be reset for Friday, **August 14, 1998** or Friday, **August 21, 1998.** This is within the time allowed for this matter. I have long-standing prepaid commitment for a professional training conference in Orlando, Florida from Thursday, July 30th to Monday, August 1st. I also have prepaid nonrefundable reservations for the same period. My wife's family and others are also committed to nonrefundable tickets to Orlando from North Carolina. My wife's birthday will also be celebrated at this family gathering in Orlando, from July 30th to August 1st.

I greatly appreciate dealing with you in this case, because you seem to lack the bitterness and mean spirit Ms. Evans consistently demonstrated. I would hope that your fresh and unbiased review of this cause, would enable this matter to be resolved without further damage to me or my client, Linda Serbin. This will confirm our lengthy conversations on Thursday and Friday, July 16th and 17th. In particular, I emphasized that there is no reason to feel sympathy for Jon Serbin. Linda Serbin has received a total of $517,500, which is a $22,500 windfall over the figure of $495,000 for which she agreed to seel her house, before any of the funds claimed herein changed hands.

It is apparent that I am intimately aware of the history and material facts here and you have little if any accurate information. From the beginning, because of the attorney client duty owed to Linda Serbin I have not been able to provide any information in order to defend Jon Serbin's claim. However, without violating Ms. Serbin's confidences, while awaiting due process and my right to defend this cause, the following is a summary of the underlying facts from the public records and files, which we briefly discussed and I offer to assist you in considering my request to mediate and for due process, to wit:

1.) **FORECLOSURE OF 6475 PINETREE CIRCLE**

Please be advised that before I became Linda's counsel [for reasons I may not disclose here], as reflected in the record in **First National Bank v. Jon Serbin and Linda Serbin**, 11th Cir. Case

92-13147-CA-24, Linda Serbin's house was being foreclosed. Linda's house at 6475 Pinetree Circle, Miami Beach, her home for 21 years, was bayfront property, with 150 feet of dock and no bridges to the ocean. As reflected in my pleadings, Linda's house was assessed by the City at $522,000 [about 60% of its value on the market]; and the adjacent properties were selling for 1.2 million dollars and 1.495 million dollars. Linda's house was on the bay adjacent to La Gorce Island, where the homes range from 2.5 million to 6.5 million dollars. As reflected in the record, I produced expert testimony that Linda's home would be a "sacrifice sale" at $750,000.

Finally, as reflected in the record, Linda Serbin carried the house for years, paying up to $200,000 from her own funds to maintain the mortgage. As a consequence and to protect her from Jon Serbin's bankruptcy and by express agreement of Jon Serbin all moneys and proceeds of any kind from the house would solely be Linda Serbin's monies.

As reflected in the record in First National Bank v. Serbin, on or about December 7, 1992, before I made an appearance in the case and without discussing it with me, Linda Serbin was intimidated and coerced into signing a Stipulation to Foreclosure, which gave judgment and possession of Linda's house to the Bank forthwith.

Based upon her discussion with the Bank and its attorney, Linda thought she had no choice and had to sign the Stipulation. Ira Gordon, Jon Serbin's attorney, gave Linda Serbin no support or advice. In fact the Stipulation was fine with Gordon and Jon Serbin, and Gordon

sent Linda a letter saying she had no choice, but to move out. Gordon also filed a claim in the Court record for five thousand dollars ($5,000) for his representation of Jon Serbin, when Gordon later realized that we had blocked enforcement of the Stipulation and the Bank's foreclosure action and that Linda's house might be sold for more than the Bank's mortgage.

In **First National Bank v. Serbin**, the Bank had originally sued for the sum of about $300,000 plus attorney's fees, which was the amount the Bank wanted for its mortgage. However, under the Stipulation and without my intervention on her behalf, Linda Serbin would have received a few days to vacate, but not a dime for her house.

As reflected in the record thereafter, solely through my vocal and tenacious defense of Linda Serbin, the Bank was prevented from enforcing the stipulation and delayed in obtaining a judgment. Even after obtaining a judgment, the Bank was also forced to postpone multiple judicial sales, while Linda and I sought a buyer for Linda's house. **See, Exhibit 4** (Response filed in Fla. Supreme Court, at attachments to Response; Motion for Clarification, etc., filed with 17th Circuit grievance committee).

However, after six (6) months of my defense to **First National Bank v. Serbin**, which included a motion for rehearing and the filing and prosecution of an appeal, which the Bank was greatly concerned with, the trial court finally set the Judicial Sale of Linda's house for **June 6, 1993.**

As a consequence, as reflected in the record, on or about **May 5, 1993**, over my reservations and advice to the contrary, Linda Serbin signed a contract with Riteway Realty for an all cash sale of her house to an attorney, Scott Bennett, for the sum of four hundred and ninety five thousand dollars ($495,000), which was supposed to close on **June 4, 1993**, two (2) days before the scheduled judicial sale of Linda's house.

After attorney Bennett failed to close on June 4th, I negotiated a release of twenty-five thousand dollars ($25,000) of the $50,000 Riteway/Bennett deposit money as a penalty for Bennett's failure to close. Bennett then transferred his interest in the sales agreement to, Maria Puentes, who was allegedly Bennett's mother. The Riteway/Puentes closing was then reset twice more and finally was scheduled for **June 28, 1993**.

When Bennett failed to close on June 4, 1993, I has also harassed the Bank's attorney and we eventually agreed to cause the Bank's judicial sale of Linda's house to be postponed yet again to **July 8, 1993**. Nevertheless, on June 28th the Riteway/Puentes sale failed to close. As reflected in the record, it was apparent that Riteway; attorney Bennett and his alleged mother, Puentes, had no intention to proceed with a legitimate sale, but rather by their subterfuge of a sale and delay, were only attempting to force a firesale of Linda's million dollar house on the courthouse steps for the amount of the Bank's interest, which was about $300,000.

Fortunately, because I had repeatedly stated that I did not consider

the Riteway/Bennett/Puentes, sale legitimate, on the weekend of June 28th Linda and I revisited the previous offer by Todd and Madeline Brandon to buy Linda's house for much less than the Riteway/Bennett/Puentes contract. As a consequence, on Saturday, July 6, 1993 two (2) days before the judicial sale of Linda's house, we sold and closed on the sale of the house with the cooperation of the Bank to the Brandons for four hundred and sixty-five thousand, five hundred dollars ($465,500).

2.) DISPUTED RITEWAY ESCROW FUNDS ON 6475 PINETREE CIRCLE

After the firesale to the Brandons, the undersigned forwarded a demand to Riteway and its two brokers for release of the remaining $25,000 of the original $50,000 escrow deposit. However, instead of responding in Riteway v. Serbin, 11th Cir. they sued Jon Serbin, Linda Serbin and Maria Puentes for the remaining $25,000 plus attorney's fees. The undersigned continued to represent Linda Serbin in Riteway v. Serbin.

At first, this case was a losing proposition all the way for the Serbins. A clause in the contract Linda had signed with Riteway/Bennett/Puentes, provided that the Realtor was entitled to the remaining $25,000 [50%] of the escrow deposit no matter what happened with the sale to Bennett or his alleged mother, Puentes.

The first judge on the case, [who was removed for misconduct in unrelated matters about a year later], therefore wanted to give all the money to Riteway immediately and was rude and arrogant to the undersigned, because I even

considered defending against Riteway's claim. The first judge, who was formerly a longtime Miami Beach lawyer, seemed to be quite deferential to Riteway's first attorney, Daniel Mones, a long time Miami Beach lawyer. Jon Serbin and Linda Serbin, who were also long time Miami Beach residents, confirmed the foregoing apparent familiarity of the Judge with attorney, Daniel Mones.

Nevertheless, the undersigned gallantly defended against Riteway's claims [and got thoroughly bashed around in the courtroom]. However, in a rear guard defense, the undersigned made a counterclaim against Riteway; a crossclaim against Puentes; initiated a third party action against the Riteway brokers and realtor; and got the case reassigned as a circuit court claim.

Meanwhile, as the case was stalled as much as possible, Riteway's lawyer, Mones, died and his friend, the Judge as noted was suddenly removed from the Miami Beach District Court by the Supreme Court for misconduct. Thereafter a new judge, Scott Silverman, was assigned the case to replace the first judge. The tide thereafter changed dramatically.

Riteway's second attorney, Frank Marks, who worked for attorney Mones, had prepared a grossly defective complaint. He also never failed to offend Judge Silverman at every hearing. Eventually, after a series of hearings and pleadings, which included motions for summary judgment by Riteway and Linda Serbin, Judge Silverman denied Riteway's claim for summary judgment and then in another series of hearings granted our claims for summary judgment against Riteway and the alleged real estate agent. The claims by

Marks were so incompetent, that the undersigned would seek attorney's fees against Marks. Additionally, since Puentes admitted the allegations in the initial complaint of Riteway and Puentes failed to defend Linda's crossclaim, Judge Silverman also granted a judgment against Puentes on the crossclaim.

However, Judge Silverman's order allowing summary judgment to be entered against Riteway was complicated by the court allowing Riteway to amend its complaint after several hearings to avoid summary judgment. However, Riteway never amended its complaint. However, thereafter before we could get the matter reset the case was transferred to a third judge and then a fourth judge, Beth Bloom. In a brief hearing on November 8, 1996 Judge Bloom granted final summary judgment against Riteway. Immediately thereafter, the undersigned forwarded a demand to Riteway to release the $25,000 they were holding.

Meanwhile, the Miami Beach District Court caught on fire and portions of the Serbin case and files were apparently misplaced. Thereafter, after receiving my demand, Marks, Riteway's counsel sought to vacate the summary judgment against Riteway. On June 5, 1997, because of ambiguities in Judge Silverman's original order allowing summary judgment against Riteway, Marks convinced the fourth Judge, Beth Bloom, to vacate the summary judgment against Riteway. Attorney Marks apparently never prepared an order to that effect, because as noted below immediately after the hearing he was fired by Riteway and replaced by attorney Spencer Fox.

After the hearing on **June 5, 1997**, I met with and agreed to settle with attorney Spencer Fox, who is apparently Riteway's broker's corporate counsel and who was present at the June 5th hearing. Thereafter, after a battle with attorney Marks [who tried to block the settlement], on **September 3, 1997**, Riteway was permitted to discharge its counsel, Marks, and attorney Spencer Fox appeared and Riteway agreed to pay the remaining $25,000 deposit to Jon and Linda Serbin, in exchange for a dismissal of Riteway and its principals from the case. Under the settlement I obtained, the case would still proceed against Puentes; the agent, Jones, and her attorney, Marks, who had been fired by Riteway.

Linda enthusiastically accepted the settlement. However, despite Linda's repeated efforts, Jon Serbin refused to agree to the settlement and wanted to proceed. Jon Serbin also tried to hire another attorney, Manny Garcia (954) 921-5500. However, Mr. Garcia declined to appear in the case, when I sent him papers allowing him to substitute counsel for the undersigned.

As a result of Jon Serbin's interference with the settlement with Riteway, it was not until nine (9) months later, after a hearing on **June 5, 1998**, on a Motion by Riteway to enforce the settlement, that Riteway paid $27,000 to Linda Serbin and John Serbin. However, at the hearing over my objections on the record, the Serbins also agreed to release not only Riteway and its principals, but to also to dismiss the crossclaim against Puentes and the third party complaint against the agent, Jones and her attorney. **The Serbins also**

agreed at the hearing on the record to pay my attorney's fees and costs.

3.) JUNE 6TH WRITTEN [redacted] STATEMENT [redacted] BY LINDA SERBIN

Apparently, on June 6, 1998, which was the day after the foregoing court proceedings in Riteway v. Serbin, [and not in the presence of your investigator], Linda allegedly signed a statement that she [redacted] joined [redacted] Jon Serbin's complaint in the above referenced case. The undersigned was presented with Serbin's alleged statement on June 10, 1998 at the status conference before the referee. I have not been allowed to defend any complaint by my client, Linda Serbin, before any Committee of the Florida Bar.

DISCUSSION

This is a fee dispute case. Assuming arguendo the legitimacy of Linda's statement, Jon Serbin's intent in this proceeding is to use the Florida Bar to get Linda Serbin [and incidentally himself], five (5) years of free legal services in the foregoing separate, but related cases. Jon Serbin has also never paid attorney Ira Gordon a dime for his representation of Jon Serbin in the above referenced foreclosure case, First National Bank v. Serbin.

Finally, as I related to you on Friday, July 17th, Jon Serbin also wants retribution against the undersigned for many matters, which I am not able to present, because they would violate Linda Serbin's attorney client rights, which have not been not waived, but to the contrary Linda has expressly not released me from.

Without my assistance and if I had never gotten involved with Linda Serbin in 1992, the Stipulation she signed on December 7, 1992 would have resulted in the loss of her house to the Bank and/or her house would have been sold on the Courthouse steps to the Bank for $300,000, the amount of its mortgage. Linda Serbin would have received nothing, but the boot out the door.

If the Riteway/Bennett/Puentes sale had gone forward on June 28, 1993, Linda Serbin would have received a maximum of $495,000, which included the Riteway $50,000 escrow deposit.

Instead, on the back of the undersigned in these cases, Linda Serbin was able to wrench $25,000 from Riteway/Bennett, when they failed to close; $465,500 in the sale from the Brandons; and $27,000 from the litigation from Riteway/Bennett/Puentes. The total recovery on the back of the undersigned has been $517,500, a windfall to Linda Serbin of $22,500 over what she was ever entitled to on the contract she signed from Riteway/Bennett/Puentes.

If I had been allowed due process and allowed to appear before the third Florida Bar Committee to consider this cause on January 20, 1998, the foregoing; my compliance and complete defense of this matter would have been presented. Additionally, up to two (2) members of the committee may have been disqualified, including the chairman, whose misconduct resulted in the hearing not being reset.

The fact is that the first 11th Circuit Grievance Committee was presented with Jon Serbin's claim and my response that Jon Serbin was not my client and the Committee declined to proceed. Elena

Evans then transferred this claim to the 17th Circuit Grievance Committee, which also declined to proceed, when informed that Jon Serbin was not my client. The 17th Circuit Committee then transferred the case back to Elena Evans.

After my responses that I would defend this case, but that Jon Serbin was not my client, Ms. Evans sent an investigator to Linda Serbin's apartment trying to get Linda Serbin to sign a complaint. Linda Serbin declined to make any complaint against the undersigned. Your investigator then asked Linda what about attorney's fees and she told him that I represented her as, *a lady in distress*.

Thereafter, as reflected in my response in the Florida Supreme Court, Jon Serbin forged Linda Serbin's signature on a typewritten statement, which was received by the undersigned for the first time only just prior to the January 20, 1997 11th Circuit Committee hearing. Apparently, with all the responses and transfers of this cause, the 11th Circuit Committee then set a hearing for January 20, 1998 and directed the undersigned to appear and defend this cause. In an outrageous disregard for the due process rights of the undersigned and the rules of conduct in the 11th Circuit state and federal courts, Chairman Freshman misled the Committee and Ms. Evans into proceeding.

In sum, if the Florida Bar is now correct in stonewalling this case and the due process rights of the undersigned, the Florida Supreme Court would not have remanded this case upon the pleadings and response before it. The referee is completely out of line in refusing to

allow me to defend my right to due process and right to defend this matter before the 11th Circuit Committee. Please review my responses and my response to Ms. Evans' Notice in the Florida Supreme Court.

Please consider the foregoing and do not feel too sorry for Jon Serbin. There has been no loss here nor wrong of any kind [by the undersigned] to Jon Serbin or Linda Serbin. Additionally, as I have repeatedly indicated there are other unspeakable matters, which would be revealed in a legitimate defense of this cause by Linda Serbin, which Linda Serbin has repeatedly told me she will not allow me to reveal. If Linda Serbin has unequivocally and knowingly waived her attorney client rights, I will be able to defend this cause as is my right.

Finally, if you are still feeling sorry for Jon Serbin, enclosed is my resume and a picture of me with my support staff [I am the one in the middle]. As reflected in the enclosed resume and attachments, I am also a father, husband, and denmaster, whose family and community is greatly appreciative of him and require his services.

Without allowing me due process or my right to defend myself, you would also deprive my family and community. I have served the citizens of Florida; and as a private attorney in an outstanding fashion for twenty-three (23) years. Please consider the foregoing; together with my responses to the Florida Bar and in the Florida Supreme Court; that two (2) other Grievance Committees refused to act on Jon Serbin's complaint; and that I deserve due process here.

This is a fee dispute case. Jon Serbin is suing the Florida Bar to try to get five (5) years of legal services for free. As reflected in the enclosed letter to John Boggs. I would urge the mediation of this cause or a remand to the Grievance Committee to allow the defense of this cause and due process, which the 11th Circuit Committee was gong to permit on January 20, 1998, before being mislead by its Chairman.

Very truly yours,

CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

cc: John A. Boggs, Esq.
Director of Lawyer Regulation.

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE
CASE NO. 92,484

THE FLORIDA BAR,
Complainant,

vs.

CALVIN D. FOX,
Respondent.
_____/

Record of proceedings had and testimony taken before Referee Paul Siegel at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130, on Wednesday, June 10, 1998, at a session commencing at 2:40 p.m., pursuant to notice.

APPEARANCES:

THE FLORIDA BAR
BY: ARLENE SANKEL, ESQ.
Branch Staff Counsel &
GREGG WENZEL, ESQ.
Assistant Staff Counsel
444 Brickell Avenue
Miami, Florida 33131
On Behalf of Complainant

CALVIN D. FOX, ESQ.
PO Box 5286
Fort Lauderdale, Florida 33310
In Pro Se

- - - -

(Thereupon, the following proceedings were had:)

THE REFEREE: This is, at least on my calendar . .it shows as a status conference.

I don't have any particular notice or motion for today, but I know that there is pending before me the notice of non-compliance with the Grievance Committee subpoena.

Let me hear first from the Bar as to where we are and what you would like to accomplish today.

MR. WENZEL: are you familiar with the background of the case?

THE REFEREE: I have read the file.

MR. WENZEL: The Grievance Committee requested from Mr. Fox several documents, that being trust account documents and things of that nature, bank records, relating to his representation of Linda Serbin.

THE REFEREE: Are you referring to the subpoena of September 23 . .as a matter of fact, September 22?

MR. WENZEL: Right.

THE REFEREE: That was to appear before a staff auditor of the Bar on October 13th.

MR. WENZEL: That's correct, Carlos Ruga.

THE REFEREE: Okay.

MR. WENZEL: As a result of not complying with that subpoena, a notice of hearing was placed before the Committee as to why he didn't comply with that particular subpoena.

Mr. Fox sent in some information regarding that, that he would not be able to attend that particular hearing, which was set for January 20th, because he would have a conflict out of state in another jurisdiction.

There was some communications between Mr. Fox and the Committee Chair, Mr. Freshman, where Mr. Freshman tried to make contact with Mr. Fox and required that Mr. Fox present additional information as to why he could not attend this particular meeting.

There was no additional information provided.

The hearing was held on January 20th. Mr. Fox was not present.

As a result of that, that's why we are particularly here, for non-compliance with the Grievance Committee's request to submit documentation as to the trust account and bank records, as to his representation of Ms. Serbin.

After Mr. Fox had sent a letter to the Committee saying, I was not at your meeting, however, . .

That he would agree to give everything as long as he got until February 12th.

Mr. Fox still hasn't given us the information he promised after he missed this particular meeting.

That's why we are here, because Mr. Fox requested a hearing in front of Your Honor as to why he doesn't have to give these particular records, the bank records.

That's where we stand.

THE REFEREE: Yes, sir?

MR. FOX: Mr. Fox did not request this hearing, Your Honor.

Justice Kogan remanded it to you, based upon their notice of non-compliance and my verified response, which they have never responded to.

Another correction is that Linda Serbin is not the complaining witness. It is Jon Serbin.

They gave me the materials a few days before the hearing scheduled by the Committee, at which the Committee said I could comply.

They gave me a document. I looked through the documents and I found one-page typed document with a signature purporting to be that of Linda Serbin.

As I explained in my verified response, it is not her signature. The only complaining witness here is Jon Serbin.

Jon Serbin was not my client when the funds for the house were received. That is abundantly clear as reflected in my verified response and exhibits.

I think what happened here was that Mr. Freshman, who I also . .I believe he is the guy . .I have asked my former partner to verify it, that Mr. Freshman is who I sued in another case. .has misled the Bar and the Committee.

He did not make any effort whatsoever to obtain additional information.

I spent a lot of money on my voice mail system.

He sent me a letter which I attached to my response, in which he says, I chose not to respond to your voice mail system.

THE REFEREE: Let me stop you, Mr. Fox.

I think any of the proceedings before the Grievance Committee are almost moot at this point.

I don't rely, really, and probably will not rely in anything I do on what the Grievance Committee did.

I think what we have is a subpoena dated September 22, 1997 for you to appear with certain trust accounts records before an auditor of the Bar.

I fully understand your position that the Complainant before the Bar is Jon Serbin, rather than Linda Serbin. I understand your position that Jon Serbin has no right to the money and further, that he was not your client.

I have read all of that.

Even assuming that all of that is true, I don't know that it makes any difference at all, because I think if the Bar has any reason at all from anybody's complaint to suspect that a lawyer may not be in compliance with the trust accounting regulations of the Code of Professional Responsibility, I don't see any reason why the Bar cannot subpoena a lawyer's trust account records.

I don't think the Bar has to have probable cause, clear and convincing evidence. I don't think they need very much at all to go on in order to issue a subpoena.

It seems under the rules as written by the Supreme Court that lawyers do not have a whole lot of rights in this area. They are required to comply with certain specific regulations in connection with their trust accounts and the Bar is given the right to subpoena a lawyer's trust account records.

As I say, I don't think they need probable cause for a complaint, but that is something that you can address.

MR. FOX: Mrs. Serbin confirmed it was not her signature, by the way.

THE REFEREE: Again, the Bar received information that you received a trust account deposit of some $25,000.

Mr. Serbin says that his wife didn't get the money.

As I say, I don't know that it matters whether he was your client . .

MR. FOX: it matters greatly, Your Honor.

THE REFEREE: Tell me why.

MR. FOX: if you read my responses, every time they sent me a subpoena. I responded by saying,Please, I need additional time.

Also, I started to them that Jon Serbin was not my client at that time and that in order to respond to this matter, Linda Serbin must waive attorney-client privilege matters.

She has not. She refuses to. She told the investigator she would not waive it. She told their investigator that in fact she does not wish to make a complaint. Everything is fine with her.

I think that I cannot be blackmailed by Mr. Jon Serbin into disclosing Linda Serbin's client-attorney matters in order to defend this case.

I am put on the horns of a dilemma by the Bar. In order to defend this case, I must disclose attorney-client information matters.

The client has declined to allow me to do that, repeatedly.

I am on the horns of a dilemma, Your Honor.

I think the issue here is . .and I think this is why Justice Kogan remanded it.

The issues drawn by the documents filed before the Court . .and that is that they said I didn't comply by showing up at the committee hearing.

THE REFEREE: it's not the committee hearing.

MR. FOX: That's why they said in their documents in the Supreme Court.

THE REFEREE: I think it is your failure to appear because the auditor on October 13, 2997.

MR. FOX: I did appear with a response, that I could file.

I appeared with a response each time they subpoenaed me.

It was fully my intent to appear before the Committee because I hoped Linda Serbin would be there. She didn't go. They wanted her there, but she declined to appear.

MR. WENZEL: Actually, they had her on the telephone and they took a statement from Mrs. Serbin via telephone.

MR. FOX: There is nothing in the record about that.

MR. WENZEL: I was informed at the last Grievance Committee meeting by Mr. Freshman that she was on the telephone and there is a transcript of those proceedings.

MR. FOX: There is nothing in the records that I have been provided that was filed in the Supreme Court of Florida that mentions that.

THE REFEREE: Let me inquire further of Mr. Fox.

I have a little problem understanding how the records of deposits into your trust account and disbursements from your trust account are going to impinge on Mrs. Serbin's right to assert attorney-client privilege.

In other words, right now, I think what you were subpoenaed to bring were certain financial records, which have never been brought.

How would the production of those financial records impinge on the attorney-client privilege of Mrs. Serbin?

MR. FOX: Are we proceeding with an evidentiary hearing, Judge?

THE REFEREE: You have raised the issue. That's another good issue.

We are noticed for a status conference today.

MR. FOX: I understand.

THE REFEREE: I have to finish this off. If you want to contend that this is not a final hearing and it's not an evidentiary hearing, that's fine. I understand that position, if that is what

you want to assert, and we will set a further hearing if we need one.

MR. FOX: Your Honor, in order to disclose a response to that question, I would have to explain the entire transaction between Mrs. Serbin and myself.

I have repeatedly told the Bar that I would like to cooperate, but she doesn't want to waive her attorney-client privilege. I repeatedly told them that.

I think that is wy the Committee said, Okay, Mr. Fox, come on down and let's talk about it.

MR. WENZEL: Can I interject?

THE REFEREE: Hold on.

Mr. FOX: That in fact is what I intended to do at the hearing scheduled for the 20th.

They just like ignored the fact that I was called to a trial in Washington State.

THE REFEREE: We are beyond that right now.

You are suggesting to me that you can't produce the trust account records because for you to do so would violate the attorney-client privilege of Mrs. Serbin.

I think I have to go beyond that and either in the presence of the Bar's lawyers or outside the presence of the Bar's lawyers, I have to listen to your reasons, either today or at some other time, and make a determination as to whether your production of the records would violate attorney-client privilege.

If we have to go that route, it can be done with a sealed transcript that requires a court order to be reviewed by anybody other than the Supreme Court or some other Judge.

But I don't think that I can simply accept the assertion that attorney-client privilege excuses you from complying with the subpoena, without going further and making a detailed inquiry as to exactly why.

MR. FOX: Your Honor, I think that's why the Committee set a meeting.

I was hoping that Linda would be there and I was hoping that I would be able to do what the Court is suggesting, and that is to disclose these matters in camera somehow.

I have to tell you that even as late as last week, I spoke to her face to face and I said, Look, this has to be resolved.

She was loathe to have this matter opened up in the public [redacted] and these records are public records, unfortunately.

THE REFEREE: I don't know that they are necessarily public records.

If I conduct an in camera hearing . . first, let me find out if Bar Counsel have any problem with my conducting an in camera hearing with a sealed record in order to hear Mr. Fox's reasons why producing these accounting records would impinge on the right to attorney-client privilege of his client.

MR. WENZEL: Judge, we have a sworn affidavit from Linda Serbin as of June 6th, about four days ago, where she says in her affidavit. .

MR. FOX: May I see the document that he is reading to you?

MR. WENZEL: (Handing).

MR. FOX: Is that the only one?

MR. WENZEL: Yes.

She says, essentially, that Mr. Fox is holding monies in an escrow account and that Mr. Fox has been holding that money for a period of five years.

At this time, I have requested these funds and he is unwilling to release them. I have never given Mr. Fox consent or permission to keep these funds. This money was a deposit on a real estate matter that didn't materialize.

I don't know what she said when Mr. Fox said he saw her last week, but as of June 6th it is clear from my conversation, as well as the affidavit, that Linda Serbin's position is that she wants the money. He has the money.

If there was any type of privilege, it's waived at this point.

She clearly wants the money that he is holding.

THE REFEREE: Please respond to my question, and that is whether the Bar would have an objection to the Court conducting an in camera proceeding with a sealed transcript on Mr. Fox's claim of attorney-client privilege on behalf of his client.

MS. SANKEL: Your Honor, Rule 4-1.6 of the Rules of Professional Conduct allow a lawyer to breach attorney-client privilege communications to the extent that such a breach is necessary in order to defend against a grievance.

So there is authority under the rules for Mr. Fox to provide us with that information.

I'm not sure if that answers your question.

My second concern would be that we still have the issue of the underlying complaint.

Assuming for a moment that you were to have a closed proceeding and that the Bar was not privy to the information that Mr. Fox were to relate to you, we would still have the issue as to is the money secure, because we have a two-pronged situation here.

We have the non-compliance matter and we still have the underlying complaint, which we need to address.

That is the dilemma that we face.

I think that if we look to the Rule, 4-1.6(e) in particular, it states:

> When disclosure is mandated or permitted, the lawyer shall disclose no more information than what is required to meet the requirement or accomplish the purpose of the rule.

Subsection (c) of that same rule provides:

> A lawyer may reveal such information to the extent that he or she reasonably believes necessary to comply with the Rules of Professional Conduct

THE REFEREE: Let me catch up with you.

MS. SANKEL: It's Rule 4-1.6. It speaks to confidentiality of information.

THE REFEREE: These rules are very difficult to work with.

Let me read that.

- (Examining).

Mr. Fox, the Bar, I gather, is suggesting that you can't assert attorney-client privilege in this setting, which is what the rule would seem to indicate.

MR. FOX: Judge, if I may. I told the Bar for years about this. Linda didn't make the complaint.

Magically, they come up with a phony statement by her that Jon Serbin generated in January, just before the January hearing.

I investigated it. Ms. Serbin said it wasn't her signature.

Now today, for the first time, at ten minutes after 3:00, they come up with another affidavit of Linda Serbin.

My entire point throughout these proceedings has been that Linda Serbin is the client. The money is Linda Serbin's. There is no question about it. Jon Serbin doesn't even dispute that.

In fact, she is not complaining about anything. She doesn't want this proceeding. She has refused to cooperate with them.

they are springing on me today an affidavit from her. I don't know who this guy, Gil, is, the notary. He is probably somebody in her husband's office.

MS. SANKEL: He is The Florida Bar's Staff Investigator and a former FBI Agent.

MR. FOX: whatever his former life was. He is the guy that notarized it?

MS. SANKEL: Yes.

MR. WENZEL: Arthur Gil, yes.

MR. FOX: She told me last Friday, which is two days after that document, that . .well, I guess Friday was the 5th. This was a Saturday.

MR. WENZEL: It was the 6th.

MR. FOX: She told me on Friday, and I brought this up again, that she . . and this was a face to face meeting . . that she did not want to proceed with this matter, that she had no complaint against me in this matter and that she had no problems in this matter.

Now they come up with this thing on Saturday, the next day.

There is a host of things going on here and I really . .I have been very anxious to explain this situation myself.

I just attended a seminar a couple of months ago and one of the ethics portions of it was about attorney-client privilege. It is one of the most sacred things.

in this case, my disclosure would be devastating to Ms. Serbin, to her family and to Jon Serbin.

Socially and otherwise, she is an extremely proud woman. She is an extremely socially well known woman in her community.

MR. WENZEL: Judge, as far as a letter that Mr. Fox wrote to the Bar on

January 17th, three days before the actual hearing [redacted] he writes:

> I intend to produce the documents requested at the presently scheduled hearing, but I am unable to do so until my return from a specially set trial in Washington. I will produce a written submission with the necessary documentation upon my return from Washington, but in no event later than February 15, 1998, for your review and analysis.

It appears in that letter that he is not standing on attorney-client privilege, that he is willing to meet with the Bar and to produce these documents.

MR. FOX: This was . .and I think if you read in the beginning of the letter, this was because you presented me a few days earlier with a typed statement from Linda Serbin that she adopted Jon Serbin's complaint.

I just glanced at it. I assumed that it was legitimate. Then when I looked at it later, it turned out it wasn't her signature. She said that she never signed it.

That's why I issued that letter, because if Linda Serbin wants me to be able to defend this, she has to let me go. I am still her attorney in a Circuit matter pending on Miami Beach.

MR. WENZEL: Also, just making a note for the record, Mr. Fox did present Ms. Serbin with a typed letter where it pretty much explains, I am not with my

husband. Mr. Fox is legitimate in his tack or representation of my interests.

That letter was never signed by Linda Serbin.

THE REFEREE: These are a lot of side issues.

I did ask you a question, Mr. Fox, and that is your response to the Bar's contention that there does not appear to be any attorney-client privilege that would enable you to give as a reason for not complying with a subpoena to produce your trust account records.

MR. FOX: in June of 1998, Your Honor, I don't think the Committee, if they allowed me to appear before them, would have referred this matter any further.

The Committee voted to refer this matter to the Supreme Court and I think if I had my due process rights to appear . .

This is, of course, a very serious matter.

MS. SANKEL: Your Honor . .

MR. FOX: Who is this lady? I'm not sure who she is.

MS. SANKEL: I am Arlene Sankel, Branch Staff Counsel of the Miami Office.

MR. FOX: The Committee voted to refer this matter and I think I am entitled to appear. They had all the subpoenas and everything.

THE REFEREE: You are beyond that now. You are in front of me.

I have to resolve the matter.

This is set as a status conference. If you want to do the hearing now, I will

be glad to do it now. If you want to come back in a couple of weeks and have a final hearing on it, come back in a couple of weeks.

I am not going to let the matter sit. I can't do that.

There is a specific provision, I just noticed today, in the rule, which says that a Referee shall hear the issue of non-comliance and issue findings thereon within thirty days of the request for issuance of the notice of non-compliance.

MS. SANKEL: Your Honor, I don't think that applies.

I think you are under the one hundred eighty day rule.

That is in the event of a notice of non-compliance issued directly by a Referee at the Referee level.

You have one hundred eighty days from, I think it was, March 25th. I'm not sure.

THE REFEREE: Well, we are rapidly getting there.

what is your preference, Mr. Fox? Would you like to do it today or would you like me to set a future hearing?

MR. FOX: I would like a copy of the document that he just read from.

THE REFEREE: They will give you that today. They can make a photocopy here.

MR. FOX: I would like them to respond to my response and the matters raised in the response. I think that is relevant.

I think I am entitled to due process. I have been denied due process on a very serious matter.

THE REFEREE: This is a status conference. It's not scheduled as a trial, so to speak.

So if you would like a trial date, pull out your calendar and we will get a trial date.

MR. FOX: All right.

THE REFEREE: Do you have your calendar with you?

MR. FOX: I sure don't.

I came down for a status conference. I did not expect to have a trial.

I just thought the Bar had noticed this to see where we were.

THE REFEREE: That's what we are doing, seeing where we are.

MR. FOX: We are halfway through the one hundred eighty days, I believe.

THE REFEREE: About that, yes.

MR. FOX: I didn't get your name either, sir.

MR. WENZEL: Gregg Wenzel.

MR. FOX: You sent the notice?

MR. WENZEL: Yes.

MR. FOX: Perhaps Mr. Wenzel and I can discuss getting this thing ready for trial and give the Court a proposed date or dates.

THE REFEREE: Here is where I am. I have one more week of non-jury trials, the 29th of June, before I go back to the Criminal Division and start trying

criminal cases, which is where you found me the last time we met.

It is more difficult for me to make hearing time available to you when I am in the Criminal Division.

The non-jury calendar in three weeks, for me is the most convenient time, so I would like to conduct a final hearing on this during the week of June 29th.

MR. FOX: I am not going to be available during that period of time, Judge. I am going to be out of the jurisdiction for that ten day period commencing the end of June through July 10th.

THE REFEREE: When in June are you leaving, Mr. Fox?

MR. FOX: Right at the end of June, Your Honor. It's something that I arranged a year ago with my family.

THE REFEREE: You have a vacation. When do you leave?

MR. FOX: The week preceding July 4th.

THE REFEREE: Do you want to look at a calendar?

MR. FOX: Yes.

THE REFEREE: Look at the week of June 29th (handing calendar) and tell me whether you will be out of town that entire week.

MR. FOX: Yes, that is the week that we leave, probably that preceding Saturday. We are gone until about the 10th of July.

It doesn't just involve me. It involves about fifteen people.

Judge, I have to tell you that I prefer the Criminal Court building for this type of proceeding, to the extent that it is possible.

It is a less open and public area. I am beyond embarrassed by this type of matter, professionally.

I would prefer to have it in the Criminal Court building on any given afternoon in July or August, after July 10th.

THE REFEREE: Let's do it July 24th, on Friday afternoon at 1:30.

Let me check first.

(Thereupon, there was an interruption in the proceedings.)

MR. FOX: This is a Hurricane Andrew matter, Judge. It's still with us.

THE REFEREE: I'm still hearing Hurricane Andrew cases.

MR. FOX: This is another one.

(Thereupon, there was an interruption in the proceedings.)

THE REFEREE: is there anything else anybody would like to discuss, since this is a status conference?

I guess Bar Counsel can send out a notice of hearing.

MS. SANKEL: Yes, Judge.

THE REFEREE: I guess you can call it a final hearing.

If anybody wants subpoenas, I am the one who issues the subpoenas. So get your requests in early.

MR. WENZEL: I am handing Mr. Fox affidavits, one of Linda Serbin and one of Jon Serbin.

MR. FOX: Dated June 6th, each one.

THE REFEREE: If any witness is unavailable or out of the country, take depositions and have the depositions available for July 24th at 1:30.

MR. FOX: Ms. Sankel, may I communicate with Mr. Wenzel?

MS. SANKEL: Please do.

MR. FOX: Do you have a direct line?

MR. WENZEL: It's 377-4445.

MR. FOX: All right.

MR. WENZEL: Do you have a phone number?

MR. FOX: You have the 839 number, which is in the Bar Journal.

I can give you another number. Area Code 954-294-9270.

MR. WENZEL: Thank you.

MR. FOX: Is that it, Judge?

THE REFEREE: I guess that's it.

MR. FOX: Thank you, Your Honor.

MS. SANKEL: Thank you, Judge.

(Thereupon, the proceedings were concluded at 3:25 p.m.)

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IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

SUPREME COURT CASE NO. 92,484
The Florida Bar Case
No. 98-71,093(11I)

THE FLORIDA BAR,
Complainant,
V.

CALVIN D. FOX,
Respondent.
_____/

RE-NOTICE OF FINAL HEARING

TO: Calvin David Fox
Post Office Box 5286
Fort Lauderdale, FL 33310-5286

DATE: Friday, August 14, 1998 at 1:30 pm

PLACE: Richard E. Gerstein,
Justice Building
1351 N. W. 12th Street, Room 300
Miami, FL 33125

YOU WILL PLEASE TAKE NOTICE that the above-styled matter will be on for hearing before the Honorable Paul Siegel, duly appointed Referee, at the time and place above-mentioned for the purpose of:

FINAL HEARING

GREGG D. WENZEL
Bar Counsel - The Florida Bar
No. 0041750
Rivergate Plaza Suite M-100
444 Brickell Avenue
Miami, Florida 33131
(305) 377-4445

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE
FLORIDA BAR CASE NO. 97-70,300(11I)

THE FLORIDA BAR,
Complainant,

VS.

CALVIN D. FOX,
Respondent,
_____/

Proceedings had before Judge Paul Siegel, sitting as Referee, at 1351 Northwest 12th Street, Miami, Florida, on August 14, 1998, commencing at 2:05 o'clock p.m., pursuant to Notice.

APPEARANCES: THE FLORIDA BAR
444 Brickell Avenue
Miami, Florida 33131
By: ARLENE SANKEL, ESQ.
Branch Staff Counsel
And
GREG WENZEL, ESQ.
Assistant Staff Counsel
On Behalf of the Florid Bar

CALVIN D. FOX, ESQ.
Pro Se

THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

MR. FOX: Judge, we have an agreement tentatively. Mr. Wenzel and I have met and discussed.

Basically, what we would propose to the Court is that we would admit documents which he and I have agreed on the transcript of January 20th, I think it was, Greg?

MR. WENZEL: Right. That is the Grievance Committee.

Essentially, Your Honor, in this case on August 12th, I received that transcript in which Mrs. Serbin testified. I was not aware of that until the 12th.

Also, recently a status conference, if you would call it, they produced an affidavit by Mrs. Serbin I think her affidavit was June 6th . .

MR. WENZEL: Correct.
MR. FOX: -- '98.

What we have tentatively worked out is. .and quite frankly, Your Honor,

there's no . .I don't thing there's any question about it. I would admit noncompliance with production of the records, which is what this case has been sent to the Court for.

MR. WENZEL: Specifically, that being trust account records from May, 1993.

MR. FOX: The subject matter of the two subpoenas.

May records, May, '93 to date.

The reasons for that, Your Honor, are in the record, but I would agree to produce those records by August 28th.

When those documents that I have are produced, I guess the Court or the Bar would dismiss this case that the case has been resolved or they would file a dismissal or something like that?

MR. WENZEL: Well, we wouldn't agree to that, but what we would agree to is not to pursue the noncompliance of the subpoena or any type of discipline as a result of that like a suspension because you didn't comply with the subpoena originally.

MR. FOX: Right, but the Supreme Court needs to know what's happening in the case.

MR. WENZEL: What we would like is that he have a date and we would like for you to determine if the date could be a little . . we would request that date to be less than the 28th, perhaps by next Friday that he produce these records and if he doesn't , that's he immediately suspended until he does produce those records.

THE REFEREE: Well, you folks either have an agreement or you don't

MR. WENZELL: That's correct, and I . .

THE REFEREE: It sounds like thus far, you don't have any agreement.

MR. FOX: The only agreement. .

THE REFEREE: You're close, but you're not there yet.

MR. FOX: The only thing we didn't agree to, Judge, is a few minutes ago, Mr. Wenzel suggested this Friday and I suggested the 28th.

Now, the reason as far as the 28th goes, I have a mass in my abdomen which they are going to do a study of on Monday and decide whether to take it out and I think . . you know, I need a little bit of time to recover from that.

I would like produce the records because quite frankly, I didn't produce the records because I was not present at the hearing on the 20th because I thought Mrs. Serbin was not making a complaint against me and now she . .

THE REFEREE: Well, let me make a suggestion then since I have listened to the two of you.

Let me suggest if it is acceptable to both sided that if on Monday, Mr. Fox, you are scheduled for surgery immediately, that the date of compliance with the subpoena will be August 28th, and if you find out that you are not going to be scheduled immediately for surgery, then the date of compliance will be the 21st.

Is that acceptable to you?

MR. WENZEL: That's acceptable.

MR. FOX: I think I could do that, Judge. If they say you know they are not going to do the surgery next week, that would be . .

THE REFEREE: Yes, I can understand. Certainly, if you're

scheduled for surgery, that's not an easy thing to go through.

MR. FOX: Yes. I've been fighting this thing since February.

MR. WENZEL: The only thing, though, is that if he is scheduled for surgery, he goes through surgery, and the 28th comes around and he has not hasn't produced those documents that he says he is going to produce, that an immediate suspension does take effect and that he understands that that's what's going to happen and he agrees to it.

MS. SANKEL: WE are trying to avoid the necessity of reappearing before you, Your Honor, if Mr. Fox does not produce the records as promised.

THE REFEREE: Yes.

Mr. Fox, obviously, if you're going to comply with the subpoena, you need to gather the records this weekend if they are not already gathered and put them in an envelope and have somebody in your office get ready to send them.

So I guess you need tell me whether you agree with the terms requested by Bar Counsel.

MR. FOX: I agree, Your Honor, to produce the records I have. That's correct.

THE REFEREE: Well, if you don't have records, of course, we have to start the process all over again.

Well, no, we don't. I mean, you have an obligation to produce the records.

MR. FOX: Right.

THE REFEREE: You can't say I am going to produce records if I have them. You have an absolute obligation under the Bar rules to maintain those records.

So if you don't have them, I would suspect that the Supreme Court will suspend-you.

MR. FOX: I understand that, Judge, and in the that . .

You're going to make a determination as to compliance at some point, I guess, then?

MR. WENZEL: Judge, that would be our agreement, that Mr. Fox . .

THE REFEREE: Well, in order to conclude this proceeding, if Mr. Fox has produced all appropriate records of his trust account, then I suppose I ought to inform the Supreme Court of that fact.

MS. SANKEL: His Honor would need to do that, yes.

THE REFEREE: Yes, and I'll ask Bar counsel, whatever happens, to prepare an appropriate order for my signature which you will send to me after you shot it to Mr. Fox and if he has any disagreement with the form of order, of course, he'll let me know.

MS. SANKEL: Your Honor, if you don't mind, I just wanted to bring up something that I think is a potential issue.

THE REFEREE: Okay

MS. SANKEL: I see partial production of records down the road.

You know, we are here and we have our witnesses here. We really would like to resolve this matter without putting anybody on.

It is what it is, but if we are going to end up two weeks from now with partial production of records or a response from Mr. Fox saying I don't have records to produce to you, we are going to end up back here again. So . .

THE REFEREE: Well, I have already made it perfectly plain I thing

to Mr. Fox that as a member of the Florida Bar, he has a responsibility to maintain trust accounting records in accordance with the rule.

If he does not have those records and is not able to produce them because he doesn't have them, then I suppose I have no choice except to find that he has not complied with the subpoena.

Unless he can demonstrate clear or good cause, which he ought to tell me about now, I'll have to make the appropriate findings.

MR. FOX: and a recommendation to the Supreme Court. Is that correct, Judge?

THE REFEREE: I don't know . .I just read the rule. I don't need to make a recommendation. I'm just a fact finder.

MR. FOX: Okay

THE REFEREE: But it's clear what the Supreme Court . .at least, it seem clear what the Supreme Court is likely to do under the circumstances.

MR. FOX: I'm just trying to . . this case because of the revelations that I have received regarding Mrs. Serbin on 8-12 and at the status conference hearing, I thing it was 6-12 or something like that . .basically, I'm trying to resolve this.

At this point, what I would have preferred is that this case now be sent back to the Grievance Committee, I produce the records, and they proceed on the substantive matter rather than horsing around with this procedural issue. That's what I'm trying to do is just okay, let's just clean this thing out, clean it up. I will agreed with Mr. Wenzel to produce the records.

MR. WENZEL: judge, there's only a problem here because it does seem little too loose from our perspective as far as coming back for a good cause hearing and whatnot in the future.

If we can organize an agreement that Mr. Fox would agree that if he does not produce those records on that date, that he will agree that a as a condition of non-production of those documents, that he will consent to be suspended indefinitely until he does produce them.

THE REFEREE: Well, we're here right now.

Let me read Rule 5-1.2 on trust accounting records and procedur4s, which says:

> Note: Sub-section two. Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a Grievance Committee or a Referee shall first find that no good cause exists for failure to comply.

I think today is the day for any showing a good cause. So if you have any good cause for failure to comply with the subpoena, Mr. Fox, you need to tell me what it is right now.

MR. FOX: I agreed to comply with it in front of . .if you read the transcript of January 20, 1998, I sent the committee a letter agreeing to comply after I received a document which appeared to be a complaint by Mrs. Serbin.

I sent them a letter and then I went to my trial in Washington state and agreed to comply.

THE REFEREE: Okay. Mr. Fox, do you have any good cause for failing to

comply with the subpoena that you want to present to me right now?

I mean, not failing to comply in the past. Do you have to comply with the subpoena by the time agreed upon a few moments ago, either August 21st, 1998 or August 28th, 1998?

MR. FOX: I will produce the documents which I have relative to the subpoena, Judge.

THE REFEREE: Well, Mr. Fox, it sounds like a bit of a hedge . .

MR. FOX: Judge, if there is a period at the end of a sentence that I'm missing somewhere, you know -

THE REFEREE: No. What you said was, I will produce the records that I have.

MR. FOX: I will produce the financial records with regard to Serbin, and I'll produce the financial records with regard to those transactions since May of `93.

THE REFEREE: Well, whatever the subpoena calls for . .

MR. FOX: Right.

THE REFEREE: . . you have to produce.

MR. WENZEL: It's just that we are concerned that we want everything that has been placed in the subpoena that he agrees to produce.

THE REFEREE: He has an obligation to produce those records, whatever has been subpoenaed; not what you have and say, I have, but the records which are described in the subpoena must be produced.

MR. FOX: I told Mr. Wenzel that.

THE REFEREE: Okay.

MR. FOX: He showed me that transcript of January 20th two days ago and I said, There's no point in going

through with this now that Mrs. Serbin has testified against me and I'm aware of it.

THE REFEREE: Okay.

MR. FOX: I was not aware that she had made a complaint before that time, Judge.

THE REFEREE: Okay.

MR. FOX: Specifically, she had denied making the complaint before.

THE REFEREE: all right. So I think we have a clear record.

Mr. Fox, by August 21st or August 28th, depending upon whether or not he is scheduled next week for surgery, will produce all records which are called for by the subpoena.

If Mr. Fox does not comply with the subpoena . .I have not heard any good cause today for a failure to comply . . and I will file my report that may be drafted by Bar counsel, which is called for under the rule that I just quoted.

MS. SANKEL: Your Honor, when we submit a proposed report of Referee, may we include in there that you recommend that Mr. Fox remain suspended if he fails to produce those records until such time as he then complies? Because I believe that the Supreme Court will be looking to you for a recommendation along those lines.

THE REFEREE: Well . .

MR. FOX: I think that's up to the Supreme Court.

MS. SANKEL: It's up to them whether or not to come with that recommendation . .

THE REFEREE: Well, I don't find the Supreme Court asking me to make a recommendation on suspension.

My job , as I see it under the rule that I have just read, is to make a

finding of fact and it is up to the Supreme Court after hearing whatever the Bar has to say and whatever Mr. Fox has to say to make a decision whether or not he will be suspended.

If they ask me for a recommendation, I certainly will make my recommendation, but I don't find that the rule on its face calls for my recommendation.

MS. SANKEL: Your Honor, if I can just have a moment. I just want to review the order.

THE REFEREE: Oh, okay. Sure. Check that.

MS. SANKEL: Your Honor, if I may, there is an order from the Supreme Court dated March 25, 1998 whereby they send this matter over to Chief Justice Farina for assignment to a Referee. Within that order, it states:

> The Referee shall hear, conduct, try, and determine the matters presented and thereafter shall submit findings of fact and recommendations to the Supreme Court of Florida as provided in Rule 3-7.6(k).

THE REFEREE: All right. So if I'm called upon to make a recommendation, then I'll make a recommendation to the Court.

MS. SANKEL: So you don't want that in our proposed order? I just want to make sure I understand.

THE REFEREE: No. If the Court has asked me to make a recommendation in that order, then you draft the order with the recommendation that you consider I should make and Mr. Fox will comment on it.

MS. SANKEL: Okay. Thank you.

THE REFEREE: Okay. Is there anything further, folks?

MS. SANKEL: One thing, Your Honor. I just want to make sure that I touch upon something Mr. Fox mentioned initially so that there is no misunderstanding.

I don't want him to be under the impression that even if he produces those records, that this matter, the initial underlying complaint that led us to be here today, will be dismissed because it may or may not depending upon what those records show, and he did sort of say something along those lines.

Since I haven't had any direct communications with him, I didn't want there to be any misunderstanding. The underlying complaint remains pending.

THE REFEREE: Well, I gather that Mrs. Serbin claims, sort of claims, her husband claims . .

I'm not sure that you owe Mrs. Serbin $25,000 and at some point in the future, I presume that that question will be determined by somebody.

MR. FOX: We are just here on noncompliance. That's all, Judge.

THE REFEREE: That's correct.

MR. FOX: That's it.

THE REFEREE: That's correct.

MR. FOX: Not the substance of the underlying complaint.

THE REFEREE: That's correct. Okay, folks.

MS. SANKEL: Thank you for your time.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Supreme Court Case No. 92,484
The Florida Bar File No. 98-71,093(11I)

THE FLORIDA BAR,
Complainant
v.

CALVIN DAVID FOX
Respondent.
_____/

FINDINGS AND RECOMMENDATIONS

THIS CAUSE having come before this referee on The Florida Bar's Notice of Noncompliance with a Grievance Committee Subpoena and The Florida Bar's Status Report on Respondent's Non-Compliance and the referee having heard from the parties and being otherwise duly advised in the premises, this referee hereby makes the following findings and recommendations:

FINDINGS:

1. No good cause has been shown for respondent's non-compliance with production of all records set forth in that Grievance Committee subpoena dated September 22, 1997, a copy of which is attached hereto.

2. The respondent, Calvin D. Fox, had agreed to provide all records set forth in the Grievance Committee subpoena dated September 22, 1997 and was ordered in open court to produce the records set forth in the referenced subpoena. (See transcript of proceedings of August 14, 1998.)

3. The respondent had stated in open court that he would produce all records required under the subpoena to The Florida Bar no later than August 28, 1998.

4. This referee has been advised by counsel for The Florida Bar that respondent has failed to produce the subpoenaed records and further, that respondent has requested yet additional time for production.

RECOMMENDATION: As respondent has failed to provide those records required pursuant to that grievance committee subpoena dated September 22, 1997, it is the recommendation of this referee that respondent be suspended until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 4th day of September, 1998.

Honorable Paul Siegel, Referee
Richard E. Gerstein Justice Bldg
1351 NW 12th Street, Room 300
Miami, Florida 33125

IN THE SUPREME COURT OF FLORIDA
[BEFORE A REFEREE]

CASE NO. 92,484

THE FLORIDA BAR,
Petitioner\Counter-respondent,
vs.

CALVIN DAVID FOX,\Counterpetitioner,
Respondent\Counter-Petitioner.
_____/

VERIFIED MOTION TO VACATE AND FOR REHEARING;
VERIFIED STATEMENT OF GOOD CAUSE

COMES NOW, the Respondent CALVIN DAVID FOX, pursuant to Rule 1.530 and Rule 1.540 Florida Rules of Civil Procedure and submits this Verified Motion to Vacate and for Rehearing and Statement of Good Cause, and as grounds therefore shows:

1.) That on **September 9, 1998** the undersigned received this Referee's letter dated September 2, 1998 and the enclosed documents entitled, Order dated September 4, 1998; and Findings and Recommendations dated September 4, 1998. The Referee's Letter provides that the undersigned may provide an affidavit of compliance or statement of good cause by Friday, September 4, 1998 or the Referee would enter an appropriate order or report on Friday, September 4, 1998.

2.) That on **September 9, 1998** the undersigned also received the Affidavit of Bar Counsel Arlene Sankel that no documents had been produced as of September 4, 1998, although the undersigned had requested additional time

by hand-written correspondence to Assistant Bar Counsel Gregg Wenzel.

3.) That on **August 14, 1998** this cause was scheduled for an evidentiary hearing before the Referee, at which time the Florida Bar was supposed to present its case for non-compliance and the undersigned would be allowed to respond and to provide his own evidence and to show cause as to why he had **not** appeared and responded to the Grievance Committee's request for documents at its hearing on **January 20, 1998**. Said Grievance Committee hearing was scheduled upon the,**Complaint of Jon Serbin,** and the related Grievance Committee Subpoena for documents, dated **September 22, 1997**, which was based solely upon the Complaint of Jon Serbin. **See, Exhibit 16** to Verified Response to Petition, Entitled `Notice of Non-compliance with a Grievance Committee Subpoena' [hereinafter the **Response**] and specifically adopted and made a verified part of the record and this Motion herein.

4.) That at the scheduled date for the hearing in this cause on August 14, 1998, in a meeting with the Referee in Chambers prior to commencing the hearing, the undersigned announced to this Court that the parties had reached an agreement to produce records **because of the disclosure of the oral complaint of Linda Serbin to the undersigned two (2) days prior to the August 14th hearing. See, Exhibit A,** hereto [transcript of August 14, 1998]. The undersigned specifically stated his desire to settle this matter without any further expenditure of time **and in order to get to the merits of the**

Jon Serbin and now apparently Linda Serbin complaint.

The undersigned therefore commenced to state the text of the agreement, which the undersigned had made with Attorney Gregg Wenzel, at his meeting with Assistant Bar Counsel Gregg Wenzel two (2) days earlier, which was as follows:

a.) That all documents submitted by either side up to the date of the August 14th hearing would be admitted into evidence;

b.) That the two transcripts of the status conference before the Referee on June 10, 1998 and the Grievance Committee hearing on January 20, 1998 would be admitted into evidence;

c.) That the documents submitted by the undersigned would remain in strict confidence pending their examination, to protect not only Linda Serbin, but other clients, who have stated that they do not wish to release their financial documents to anyone;

d.) That this cause would thereafter be remanded or a recommendation for remand would be made to the Grievance Committee in order to address any substantive issues remaining; and

e.) That each party would bear its own fees and costs prior to the August 14th hearing date; and

f.) That the Referee's announced denial of the Motion to Disqualify would be stated in any order.

Cf., Exhibit B, attached hereto (Correspondence to Attorney Wenzel).

At the conclusion of the August 14th hearing, Assistant Bar Counsel Wenzel, also wanted this Referee to issue an order that the undersigned shall be suspended if he did not, *comply* with the Referee's order, which the Referee specifically declined to do. Exhibit A at page 11.

5.) Notwithstanding that the Referee had specifically declined to make said order of immediate suspension, Bar Counsel, Arlene Sankel, thereafter proposed to send the Referee an order, which ordered that the undersigned would be suspended if he failed to comply with the Referee's order. Furthermore, Ms. Sankel's proposed order failed in any respect to adhere to the parties agreement; failed to state the agreement to admission of evidence; failed to address any issue of confidentiality; failed to address the Referee's decision upon the Motion to Disqualify; and as noted specifically stated that the undersigned would be immediately suspended if he did not comply with the Referee's order. Exhibit C, appended hereto.

6.) That if this Referee will recall and it is specifically restated herein under penalty of perjury, that the concern of the undersigned at all times since he was first requested to respond in this matter on September 6, 1996 (see, RESPONSE at pp.1-2; 10-11; and RESPONSE at Exhibits 2, 3, 4, and 5), is that in order to defend against the complaint of Jon Serbin, the undersigned must violate the confidences of his only client in this matter, Linda Serbin. See Exhibit D attached hereto (transcript of status conference herein on or about June 10,

1998). That the disclosures, which the Florida Bar has been seeking herein since September 9, 1996 and at all times not in confidence, would subject the undersigned to being a witness against Linda Serbin in both civil and criminal matters; and would further subject Linda and Jon Serbin to criminal and civil prosecution for crimes in both federal and state courts.

7.) That furthermore, the undersigned was also specifically prohibited from complying with said September 22, 1997 subpoena at the invitation of the Grievance Committee, by attending the Grievance Committee's hearing on January 20, 1998, because of settled rules of procedure regarding conflicts in the 11th Circuit. See, RESPONSE, at pp. 4-10; and Exhibits 15 to 18.

8.) That the Grievance Committee was also informed and accepted as factual that the undersigned was in trial in Washington at the time and date scheduled for said Grievance Committee hearing and was thus unable to attend and defend against the unsworn allegations of Linda Serbin, presented for the first time at said January 20, 1998 11th Circuit Grievance Committee hearing. See, Exhibit E, attached hereto, at pp. 3-15.

9.) That the undersigned was denied fundamental due process herein prior to the Grievance Committee's finding of non-compliance and the filing of the Notice by Assistant Bar Counsel, Elena Evans. See, Id.

10.) That the foregoing, which the undersigned has complained of herein since October 1996 and the offer of proof

what he would have presented to the Grievance Committee stated herein at paragraph 22 below, constitute good cause for his responses to the Grievance Committees and his inability to respond further to the 11th Circuit Grievance Committee's September 22, 1997 subpoena.

11.) That the foregoing, which the undersigned has complained of herein since October 1996; the offer to proof of what he would have presented to the Grievance Committee stated herein at paragraph 22 below; and the following circumstances stated below, constitute good cause for his inability to respond further to the 11th Circuit Grievance Committee's September 22, 1997 subpoena; this Referee's Letter of September 2, 1998 requesting a response by September 4th; the parties' Agreement presented on August 14th; and this Referee's September 4, 1998 Order.

12.) That said Findings and Order of this Referee overlook and have failed to consider that the August 14th agreement was an agreement conditioned upon the Florida Bar's agreement as stated above.

The undersigned specifically complained on Wednesday, August 26t to Bar Counsel Arlene Sankel as to the foregoing deficiencies in the order she proposed to submit to the present Referee and the undersigned, <u>this was supposed to be done under an agreement and if there is no agreement we have no deal to produce anything.</u>

13.) That where the Florida Bar has repudiated its agreement of thee is a mistake of fact, this Referee's order and Findings should be vacated, where the

undersigned specifically predicated his agreement to produce documents upon the cooperation and existence of an agreement with the FLorida Bar.

14.) That additionally other clients of the undersigned have specifically prohibited the undersigned from producing any financial records.

15.) That said Findings and Order of this Referee fail to address the parties' agreement, including but not limited to the admission of all documents and transcripts herein; and the confidentiality of documents to be produced.

16.) That said Findings and Order of this Referee deny the undersigned fundamental due process, before the taking of his livelihood and ability to remain a productive citizen and member of the profession.

17.) That said Findings and Order of this Referee imposed permanent irretrievable injury to the undersigned personally and professionally for the remainder of his career, where the undersigned has been willing but unable to cooperate in the face of the most fundamental precept of the profession, that of protecting those most intimate confidences of a client and the sacrosanct attorney/client privilege.

18.) Furthermore, as reflected in the transcript of the status conference of about June 10, 1998 and his RESPONSE in the Florida Supreme Court, the undersigned has acted at all times in good faith herein, upon his desire to protect his client, LINDA SERBIN, from the forced disclosure of her most intimate attorney/client information.

19.) That the undersigned was not aware until August 12, 1998 two (2) days prior to said August 14th hearing before this Referee that Linda Serbin had made any allegations against the undersigned at the Grievance Committees' January 20th hearing. That from the inception of this matter in September 1996 up to and including the status conferece before this Referee on or about June 10, 1998, Linda Serbin has repeatedly specifically denied to the undersigned that she had made any allegations against the undersigned. That Linda Serbin had specifically denied making any appearance at the Grievance Committee's January 20, 1998 hearing.

20.) That the undersigned is entitled to fundamental due process before the taking of his rights and livelihood and the resulting deprivation of his family and his ability to provide food and shelter for his family.

21.) That Linda Serbin and Jon Serbin have profited substantially by the representation of the undersigned and Jon Serbin initiated this proceeding solely in order to use the Florida Bar to obtain a **double windfall** of more than $22,500 on the sale of the Serbin residence; and five (5) years of free legal services in the defense of the foreclosure of the Serbin residence and prosecution of the Serbin claims against the real estate brokerage. **See Exhibit F** [July 20, 1998 correspondence to Assistant Bar Counsel Wenzel (which is specifically adopted and verified herein)].

22.) That contrary to the testimony of Linda Serbin at the Grievance Committee on January 20, 1998, among other contradictions, the undersigned

would also make an offer of proof a.) That he has a written contract and agreement with Linda Serbin for legal services, which the Serbins sat back and accepted all the benefits of; b.) That he has provided Linda Serbin with both an accounting and a gratuitous refund of monies to Linda Serbin, under a claim of hardship, which the undersigned was under no obligation to refund; and c.) That the reason that Jon Serbin and then Linda Serbin waited more than three (3) years before making any written or oral claim whatsoever, was because of the foregoing facts.

23.) That there is no prejudice in allowing the undersigned fundamental due process before imposing severe, permanent and irretrievable harm upon the undersigned, his family and his extraordinary twenty three (23) year career. See, Exhibit F; and Exhibit G [resume of the undersigned].

24.) That the Referee in said Recommendation and Order has failed, refused and overlooked to consider the matters upon which this cause was referred to the Referee. See, also, Exhibit B (transcript of June 10, 1998).

25.) That the Referee has overlooked that the Motion to Disqualify should have been granted where the Referee is called upon herein to impose irretrievable harm upon a former political opponent, who previously had sought before this Court to stop the Referee from obtaining the current political appointment, which the Referee presently occupies and is using to judge the undersigned. Surely in this circumstance, which is well-known to the Referee, it is incumbent upon the Referee

to **sua sponte** remove himself in these circumstances, irrespective as to procedural niceties or when the matter may have been ripe for presentation by the parties.

26.) That there is no lawful probable cause for this proceeding in these circumstances.

27.) That this Court and/or the Referee has not lawfully acquired jurisdiction in this cause in these circumstances.

28.) That this Court and/or the Referee has not lawfully acquired jurisdiction in this cause as verified in the RESPONSE within the meaning and intent of **Mabie v. Garden Street Management**, 397 So.2d 920 (Fla. 1981) and its progeny, where two (2) previous Grievance Committees have declined to proceed herein after receiving the response of the undersigned that JON SERBIN is not his client.

29.) I hereby swear upon penalty of perjury that the foregoing is true and correct within the meaning and intent of Title 28 U.S. Code, Section 1746. Executed on this 14th day of September, 1998.

CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

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DOCUMENT	EXHIBIT NO.
Transcript of August 14, 1998	A
Letter to Gregg Wenzel August 12, 1998	B
Letter to Calvin David Fox and Order	C
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Letter to Gregg Wenzel July 20, 1998	F
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IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

SUPREME COURT CASE NO. 92,484

THE FLORIDA BAR,
Complainant,
V.

PAUL SIEGEL, Referee

CALVIN D. FOX,
Respondent.
_____/

ORDER DENYING MOTION TO VACATE AND FOR REHEARING

THIS CAUSE came before the undersigned Referee on Respondent, Calvin David Fox's, Verified Motion to Vacate and for Rehearing, which was received in the office of the undersigned on or about September 14, 1998[3], and the Referee being fully advised in the premises and having reviewed the verified motion and the Florida Bar's response, it is hereby ordered as follows:

1. Respondent's motion is denied.

2. As set forth in the Referee's Findings and Recommendations of September 4, 1998, Respondent has shown no good cause for failure to comply with the Grievance Committee subpoena of September 22, 1997. Notwithstanding his clear and specific agreement set forth in the transcript of the hearing before the Referee on August 14, 1998 to provide the

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[3] The Referee was on vacation from September 11, 1998 until October 13, 1998.

subpoenaed records, it is apparent that Respondent has failed to produce any records whatsoever. It remains the recommendation of this Referee that Respondent, Calvin David Fox, be suspended from the practice of law until such time as he fully complies with the Grievance Committee subpoena of September 22, 1997.

3. In his present motion, Respondent also reargues his motion to disqualify referee. That motion was denied because it was untimely. The grounds set forth in the motion are essentially the same as the grounds in Respondent's motion to disqualify the same Referee in an unrelated disciplinary proceeding over which the Referee presided last year, the complete record for which remains with the Supreme court of Florida. Last year's motion to disqualify referee was filed shortly before a final hearing in the matter. The motion to disqualify in the captioned case was filed two days before a schedule final hearing. From 1997 forward, Respondent was aware of all of the grounds which he asserted in his motion to disqualify the Referee in the captioned proceeding. Under Fla.Rule.Jud.Admin. 2.160(e), any motion to disqualify was required to be filed within 10 days of the appointment of the referee, and this was not done.

DONE and ORDERED at Miami, Dade County, Florida this 16th day of September, 1998.

PAUL SIEGEL, Referee

IN THE SUPREME COURT OF FLORIDA

CASE No. 92,484

THE FLORIDA BAR,
Complainant,

V.

CALVIN D. FOX,
Respondent.
_____/

PETITION FOR REVIEW

COMES NOW, the Respondent, CALVIN DAVID FOX, pursuant to Rule 3-7.7 Florida Rules of Discipline and submits this Petition to Review the Referee's Findings and Recommendations, dated September 4th which was rendered final by the Referee's order entitled, Amended order Denying Motion to Vacate and For Rehearing, which is dated October 16, 1998, to wit:

1.) That the Respondent is in receipt of the Referee's report, which is entitled, Findings and Recommendations and is dated September 4, 1998. Said order was rendered final by the Referee's order dated October 16, 1998, which is entitled, Amended Order Denying Motion to Vacate and For Rehearing.

2.) That the Respondent would request that this Court allow the review herein of all aspects of the Committee proceedings below and the Referee proceedings below, including but not limited to the findings of the Referee for the following reasons:

3.) That on August 14, 1998 this cause was scheduled for an evidentiary hearing before the Referee, at which time the Florida Bar was supposed to present its case for non-compliance and the undersigned would be allowed to respond and to provide his own evidence and to show cause as to why he had not appeared and responded to the Grievance Committee's request for documents at its hearing on January 20, 1998. Said Grievance Committee hearing was scheduled upon the Complaint of Jon Serbin and the related Grievance Committee Subpoena for documents, dated September 22, 1997, which was based solely upon the Complaint of Jon Serbin. See, Verified Response to Petition, Entitled `Notice of Non-compliance with a Grievance Committee subpoena' [EXCERPT ATTACHED HERETO; and hereinafter the [RESPONSE] AND SPECIFICALLY ADOPTED AND MADE A VERIFIED PART OF THE RECORD BELOW.

4.) That at the scheduled date for the hearing in this cause on August 14, 1998, in a meeting with the Referee in Chambers prior to commencing the hearing, the undersigned announced to the Referee that the parties had reached an agreement to produce records because of the disclosure of the oral complaint of Linda Serbin to the undersigned two (2) days prior to the August 14th hearing. See, Transcript of August 14, 1998. The undersigned specifically stated his desire to settle this matter without any further expenditure of time and in order to get to the merits of the Jon Serbin and for the first time, apparently Linda Serbin complaint.

The undersigned therefore commenced to state the text of the agreement, which the undersigned had made with Attorney Gregg Wenzel, at his meeting with Assistant Bar Counsel Gregg Wenzel two (2) days earlier, which was as follows:

a.) That all documents submitted by either side up to date of the August 14th hearing would be admitted into evidence;

b.) That the two transcripts of the status conference before the Referee on June 10, 1998 and the Grievance Committee hearing on January 20, 1998 would be admitted into evidence;

c.) That the documents submitted by the undersigned would remain in strict confidence pending their examination, to protect not only Linda Serbin, but other clients, who have stated that they do not wish to release their financial documents to anyone;

d.) That this cause would thereafter be remanded or a recommendation for remand would be made to the Grievance Committee in order to address any substantive issues remaining; and

e.) That each party would bear its own fees and costs prior to the August 14th hearing date; and

f.) That the Referee's announced denial of the Motion to Disqualify would be stated in any order.

Cf., Correspondence to Attorney Wenzel.

At the conclusion of the August 14th hearing, Assistant Bar - Counsel Wenzel, also wanted the Referee to issue an order that the undersigned shall be suspended if he did not *comply* with the Referee's order, which the Referee **specifically declined to do**. Transcript of August 14, 1998 at page 11.

5.) Notwithstanding that the Referee had specifically declined to make said order of immediate suspension, Bar Counsel, Arlene Sankel, thereafter proposed to send the Referee an order, which ordered that the undersigned would be suspended if he failed to comply with the Referee's order. Furthermore, Ms. Sankel's proposed order failed in any respect to adhere to the parties agreement; failed to state the agreement to admission of evidence; failed to address any issue of confidentiality; faiiled to address the Referee's decision upon the Motion to Disqualify; and as noted specifically stated that the undersigned would be immediately suspended if he did not comply with the Referee's order.

6.) That that the repeated and consistent unaddressed concern of the undersigned at all times since he was first requested to respond in this matter on **September 6, 1996** (**see, RESPONSE** at pp. 1-2; 10-11; and **RESPONSE** at Exhibits 2, 3, 4, and 5), is that in order to defend against the complaint of Jon Serbin, the undersigned must violate the confidences of his only client in this matter, Linda Serbin. **See**, Transcript of status conference on June 10, 1998. That the disclosures, which the Florida Bar has been seeking herein since **September**

9, 1996 and at all times not in confidence, would subject the undersigned to being a witness against Linda Serbin in both civil and criminal matters; and would further subject Linda and Jon Serbin to criminal and civil prosecution for crimes in both federal and state courts.

7.) That furthermore, the undersigned was also specifically prohibited from complying with said September 22, 1997 subpoena at the invitation of the Grievance Committee, by attending the Grievance Committee's hearing on January 20, 1998, because of settled rules of procedure regarding conflicts in the 11th Circuit. **See, RESPONSE**, at pp. 4-10; and Exhibits 15 to 18.

8.) that the Grievance Committee was also informed and accepted as factual that the undersigned was **in trial in Washington** at the time and date scheduled for said Grievance Committee hearing and was thus unable to attend and defend against the **unsworn** allegations of Linda Serbin, presented **for the first time** at said January 20, 1998 11th Circuit Grievance Committee hearing by telephone. **See**, Transcript of June 10, 1998, at pp. 3-15.

9.) that the undersigned was denied fundamental due process herein prior to the Grievance Committee's findings of non-compliance on **January 20, 1998** and the filing of the Notice by Assistant Bar Counsel, Elena Evans based upon that Grievance Committee hearing. **See, Id.**

10.) That the foregoing, which the undersigned has complained of herein since October 1996 and the offer of proof of what he would have presented to the Grievance Committee stated herein at paragraph 22 below, constitute good cause for his responses to the Grievance Committees and his inability to respond further to the 11th Circuit Grievance Committee's September 22, 1997 subpoena.

11.) That the foregoing, which the undersigned has complained of herein since October 1996; the offer of proof of what he would have presented to the Grievance Committee stated herein at paragraph 22 below; and the following circumstances stated below, constitute good cause for his inability to respond further to the 11th Circuit Grievance Committee's September 22, 1997 subpoena; the Referee's Letter of September 2, 1998 requesting a response by September 4th; the parties' Agreement presented on August 14th; and the Referee's September 4, 1998 Order.

12.) That said Findings and Order of the Referee overlook and have failed to consider that the August 14th agreement was an agreement conditioned upon the Florida Bar's agreement as stated above.

The undersigned specifically complained on Wednesday, August 26th to Bar Counsel Arlene Sankel as to the foregoing deficiencies in the order she proposed to submit to the present Referee and the undersigned stated, <u>this was supposed to be done under an agreement and if there is no agreement we have no deal to produce anything</u>.

13.) That where the Florida Bar has repudiated its agreement, or there is a mistake of fact, the Referee's order and Findings should be vacated, where the undersigned specifically predicated his agreement to produce documents upon the cooperation and existence of an agreement with the Florida Bar.

14.) That additionally other clients of the undersigned have specifically prohibited the undersigned from producing any financial records.

15.) That said Findings and Order of the Referee fail to address the parties' agreement, including but not limited to the admission of all documents and transcripts herein; and the confidentiality of documents to be produced.

16.)That said Findings and Order of the Referee deny the undersigned fundamental due process, before the taking of his livelihood and ability to remain a productive citizen and member of the profession.

17.) That said Findings and Order of the Referee imposed permanent irretrievable injury to the undersigned personally and professionally for the remainder of his career, where the undersigned has been willing but unable to cooperate in the face of the most fundamental precept of the profession, that of protecting those most intimate confidences of a client and the sacrosanct attorney/client privilege.

18.) Furthermore, as reflected in the transcript of the status conference of about June 10, 1998 and his RESPONSE

in the Florida Supreme Court, the undersigned has acted at all times in good faith herein, upon his desire to protect his client, LINDA SERBIN, from the forced disclosure of her most intimate attorney client information.

19.) That the undersigned was not aware until August 12, 1998 two (2) days prior to said August 14th hearing before the Referee that Linda Serbin had made any allegations against the undersigned at the Grievance Committees' January 20th hearing. That from the inception of this matter in September 1996 up to and including the status conference before this Referee on or about June 10, 1998, Linda Serbin had repeatedly specifically denied to the undersigned that she had made any allegations against the undersigned. That Linda Serbin had specifically denied making any appearance at the Grievance Committee's January 20, 1998 hearing.

20.) That the undersigned is entitled to fundamental due process before the taking of his rights and livelihood and the resulting deprivation of his family and his ability to provide food and shelter for his family.

21.) That Linda Serbin and Jon Serbin have profited substantially by the representation of the undersigned and Jon Serbin initiated this proceeding solely in order to use the Florida Bar to obtain a **double windfall** of more than $22,500 on the sale of the Serbin residence; and five (5) years of free legal services in the defense of the foreclosure of the Serbin residence and prosecution of the Serbin claims against the real estate

brokerage. See, July 20, 1998 correspondence to Assistant bar Counsel Wenzel.

22.) That contrary to the testimony of Linda Serbin at the Grievance Committee on January 20, 1998, among other contradictions, the undersigned would also make an offer of proof a.) that he has a written contract and agreement with Linda Serbin for legal services, which the Serbins sat back and accepted all the benefits of; b.) that he has provided Linda Serbin with both an accounting and a gratuitous refund of monies to Linda Serbin, under a claim of hardship, which the undersigned was under no obligation to refund; and c.) that the reason that Jon Serbin and then Linda Serbin waited more than three (3) years before making any written or oral claim whatsoever, was because of the foregoing facts.

23.) That there is no prejudice in allowing the undersigned fundamental due process before imposing severe, permanent and irretrievable harm upon the undersigned, his family and his extraordinary twenty-three (23) year career.

24.) That the Referee in said Recommendation and Order has failed, refused and overlooked to consider the matters upon which this cause was referred to the Referee. See, also, Transcript of June 10, 1998.

25.) That the Referee has overlooked that the Motion to Disqualify should have been granted where the Referee is called upon herein to impose irretrievable harm

upon a former political opponent, who previously had sought before this Court to stop the Referee from obtaining the current political appointment, which the Referee presently occupies and is using to judge the undersigned. Surely in this circumstance, which is well-known to the Referee, is it incumbent upon the Referee to **sua sponte** remove himself in these circumstances, irrespective as to procedural niceties or when the matter may have been ripe for presentation by the parties.

26.) That there is no lawful probable cause for this proceeding in these circumstances.

27.) That this court and/or the Referee has not lawfully acquired jurisdiction in this cause in these circumstances.

28.) That this Court and/or the Referee has not lawfully acquired jurisdiction in this cause as verified in the RESPONSE within the meaning and intent of **Mabie v. Garden Street Management**, 397 So.2d 920 (Fla. 1981) and its progeny, where two (2) previous Grievance Committees have declined to proceed herein after receiving the response of the undersigned that JON SERBIN is not his client.

29.) I hereby swear upon penalty of perjury that the foregoing is true and correct within the meaning and intent of Title 28 U.S. Code, Section 1746. Executed on this 14th day of November, 1998.

CALVIN DAVID FOX
Fla. Bar No. 192098

IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,484

THE FLORIDA BAR, by and through
the Complaint of Jon Serbin

Complaintant,

vs.

CALVIN DAVID FOX,

Respondent.

ON A NOTICE OF NON-COMPLIANCE
WITH SUBPOENA DUCES TECUM FILED
BY COMPLAINTANT

REPLY BRIEF OF THE RESPONDENT/PETITIONER

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Fla. Bar No. 192098

* * *C.) **FAILURE OF DUE PROCESS**

In response to the lack of due process claim the Florida bar claims that Linda Serbin testified under oath at the January 20, 1998 hearing and that the attorney client privilege reason for not producing the records requested therefore did not exist and in any event the attorney client privilege may be outweighed by the public interest in getting Linda Serbin's records.

First of all, this Court should understand that the present complaint of non-compliance is traveling solely upon the Complaint of **Jon Serbin**, the estranged husband of Linda Serbin, who was the only client of the undersigned at all times relevant hereto. There was no other complaint before this Court.

Indeed, the purpose of the hearing on **January 20, 1998** [where the undersigned supposed to be allowed to appear and defend his license], was stated as, **Notice of Hearing Before a Grievance Committee** upon, **THE COMPLAINT OF JON SERBIN AGAINST CALVIN D. FOX. A2** at pp. 15-16.

In the present case, Linda Serbin had made no complaint to the undersigned or the Florida Bar at any time prior to the January 20, 1998 Grievance Committee hearing. **See, Discussion below** and **Petitioiner's Initial Brief** at p. 6, Footnote 1. Indeed, Linda Serbin had been visited repeatedly by the Florida Bar since 1996 and refused to make any complaint and had instructed the undersigned to not reveal the attorney/client relationship.

Since Jon Serbin's complaint was the matter noticed for hearing, the undersigned was prepared to defend against the Jon Serbin complaint as reflected in his motions for protective orders in response to the 11th circuit subpoena. If Linda Serbin had made a written complaint and waived her rights under the attorney client privilege, the proceeding on January 20, 1998, would have resulted in a completely different defense and complete exoneration.

Linda Serbin did not appear at the hearing and was not sworn as the Florida Bar indicates in its brief. **Bar Brief** at pp. 18-19. Instead, as indicated in the Petitioner's initial brief, nobody bothered to tell the undersigned until **August 12, 1998** that Linda Serbin was not at the hearing, but was unsworn on the telephone on January 20, 1998. **Petition's Brief**, at pp. 6-7.

Under the foregoing authority, it was essential that the undersigned appear at said January 20, 1998 hearing in this cause. It was essential that the attorney-protection afforded to Linda Serbin since October 1996, be dissolved and the undersigned allowed to defend this matter and to exonerate himself. The Grievance Committee asked the right questions during the proceeding. The undersigned had the answers to those questions, which would have resulted in no adverse finding. Instead, the undersigned has wrongfully been made to look by this Committee before this Court as an idiot, who has no reason to not cooperate.

The opposite is true and the undersigned is entitled to due process and his right to defend his livelihood.

The delay in the proper resolution of this proceeding since October 1996 and the efforts to protect the attorney/client rights of Linda Serbin at his own peril, has been a nightmare for the undersigned, severely affecting his family, his professional life and career. Nevertheless, in order to allow his defense of a claim by Linda Serbin, the undersigned would request that this Court would dismiss this proceeding and/or remand for a proceeding **ab initio** consistent with the **new sworn complaint by Linda Serbin.**

D.)FLORIDA BAR CLAIMS OF WAIVER AND CONFESSION OF ERROR

The Florida Bar attempts to use a letter sent by the undersigned on January 17, 1998, expressing his desire to cooperate and produce records after his return from a trial in Seattle. **Bar Brief** at p. 5. The Florida Bar falsely asserts without any record basis that the Grievance Committee on January 20, 1998 **relied** upon said letter in its finding of non-compliance on January 20, 1998. **Bar Brief**, at p. 5. The Florida Bar also attempts incorrectly to claim that because the undersigned recited an agreement in the record at the hearing on **August 14, 1998**, that thereby the undersigned abandoned any previous objections to the complaint of Jon Serbin; and abandoned all claims regarding the lack of due process afforded by the 11th Circuit Committee in proceeding with the January 20, 1998 grievance committee hearing without allowing the undersigned his previously granted right to appear and defend the complaint of Jon Serbin, which was the

matter noticed for hearing. Bar Brief, at pp. 16-17.

Contrary to the Florida Bar's assertion, the effort of the undersigned to reach an agreement, despite the defects in the proceedings below; and the untimely first complaint from his client three (3) years after the initiation of this nightmare, was only emblematic of the uniform representation of the undersigned to cooperate if his client, Linda Serbin, would waive her attorney client rights in this case. For five years, Linda Serbin had steadfastly confirmed the correctness of the agreement with the undersigned in 1992 and had for three (3) years despite threats, physical violence and repeated efforts by the Florida Bar, refused to make any complaint against the undersigned and had instructed the undersigned to not revealing the written agreement and secrets she had confided in the undersigned in 1992, which are essential to his right to defend this cause.

Since October 1996 when the undersigned first received the Complaint of Jon Serbin, he has uniformly expressed his desire to cooperate, BUT INABILITY TO DO SO BECAUSE DEFENDING JON SERBIN'S COMPLAINT WOULD CAUSE HIM TO BE A WITNESS AGAINST HIS CLIENT AND SUBJECT HER TO CIVIL AND CRIMINAL COMPLAINTS AND SEVERE EMBARRASSMENT IN THE COMMUNITY. See, Exhibits 1 to 8, attached to Verified Response to Petition Entitled, ▒ Notice of NonCompliance with Grievance Committee Subpoena,▒ consisting of: Letter of October 20, 1996; Letter of November 3, 1996; Response to 17th Circuit subpoena; Response to 11th Circuit Subpoena;

Notice of Conflict and Motion to Resche3dule; Letter of January 12, 1998; Letter of January 17, 1998.

Moreover, contrary to what the Florida Bar has represented to this Court, the letter of Friday, January 17, 1998, which the Florida bar claims the Committee relied upon, was **not** in the possession of the Committee and the Committee did **not** consider it at any time during the Monday, January 20, 1998 hearing. **See, Transcript of January 20, 1998** (submitted with initial brief). However, as reflected on the face of the January 20th transcript, the Grievance Committee ignored all requests by the undersigned to allow more time for his appearance to defend this cause and instead found non-compliance. **Id.**

Furthermore, the Florida Bar has attempted to mislead this Court by partially quoting the letter of January 17th and not presenting reason the Friday, January 17, 1998 letter was issued. At the time, as reflected in the face of the Friday, January 17th letter the undersigned had just received for the first time an unsworn document submitted by Jon Serbin and addressed to the **17th Circuit Grievance Committee**, which purported to be Linda Serbin's complaint and which prompted said January 17th letter:

> I have not received or reviewed several of the documents, which you have just forwarded to me, which I received on or about January 7, 1998. Linda Serbin has been telling me a completely different story than she has been telling you. As a

> consequence and pursuant to our discussion, this will confirm that I intend to produce the documents requested at the presently scheduled hearing, but am unable to do so until my return from the specially set trial in Washington . . **Exhibit 8** to **Response**.

Nevertheless, as noted above, the Grievance Committee did **not** have this letter at the time it reached a conclusion of non-compliance and went forward with their non-compliance finding despite all efforts of the undersigned to the contrary. Furthermore, no effort has ever been made by the Grievance Committee nor the Florida Bar to even acknowledge receipt this offer of compliance, until the present Florida Bar Brief.

Additionally, as reflected at footnote 1 of the Petitioner's initial brief, upon examining said purported letter, the undersigned subsequently realized and then confirmed with Linda Serbin that Jon Serbin had **forged** Linda Serbin's signature to the typewritten letter. After requesting to see a copy of it, on March 3, 1998 Linda Serbin stated to the undersigned that the signature on the letter was obviously not hers and she did not endorse it.

Furthermore, even in the middle of these proceedings, after the Notice of Non-Compliance was filed herein and this cause remanded to the Referee, and after **June 6, 1998**, the undersigned has still uniformly expressed his desire to cooperate and provide a defense to this cause in light of the **new** Linda Serbin complaint on June 6, 1998. **See, Letter of July 20, 1998 to Gregg Wenzel** [**A2** at

pp. 17-24 (complete history of the Serbin litigation); Letter of July 24, 1998 to Jon Boggs [A2 at pp. 25-27]; and Letter of August 12, 1998 to Gregg Wenzel [A2 at p. 28.].

Indeed, the undersigned in his petition for Review in this Court and his initial brief has repeatedly expressed that if Linda Serbin has made a legitimate complaint, waiving her attorney client privilege protection, he would show, a.) that he has a written contract and agreement with Linda Serbin for legal services, which Linda Serbin sat back and accepted all the benefits of; b.) that he has provided Linda Serbin with both an accounting and a gratuitous refund of monies to Linda Serbin, under a claim of hardship, which the undersigned was under no obligation to refund; and c.) that the reason that Linda Serbin waited more than five (5) years before making any written claim whatsoever, was because of the foregoing facts. Furthermore as reflected in the Petitioner's attached letter of July 20, 1998 to Gregg Wenzel, Linda Serbin is not out a nickel in the litigation over her house and instead has made a profit of $217,500 over what Jon Serbin would have given the house to the bank, upon the back of the undersigned. See, A2, at pp. 22-23.

Under no circumstance has the undersigned ever abandoned any objections to the complaint of Jon Serbin or the procedures by which this cause has arrived in this Court. The proposed agreement, which the undersigned attempted to present at the hearing below on August 14, 1998 was not an admission of anything and certainly was not an

admission of no defense to the claim herein as the Florida Bar now contends. The Agreement, which the Florida Bar does contest the existence of was not more than the same cooperation the undersigned has expressed since 1996 to cooperate with the Florida Bar if he is released from his attorney client obligations to Linda Serbin. **That was not the case at the time of the January 20, 1998 Grievance Committee hearing which is the subject matter of this proceeding**.

The Florida Bar is bootstrapping its argument to the severe prejudice of the undersigned in quoting the passage at the page 3-4 of the transcript of August 14, 1998, where in totally changed circumstances in the face of the Linda Serbin complaint presented for the first time six years after the fact, the undersigned states the obvious, **no, he did not comply with the 11th Circuit subpoena. Bar Brief**, at p.3.

Read in context the undersigned did not produce any records in 1996 since their production would have caused criminal and civil charges to be brought against Linda Serbin and would have resulted in the undersigned being called as a witness against his own client. **Read in context**, the point the undersigned was again making on August 14, 1998 was that since Linda Serbin had been forced, intimated and mislead into making such a complaint, the undersigned was fully ready to defend this cause and to exercise his rights and that an agreement to produce records would save this Court and the undersigned much time and effort.

E.) DEFENSE OF ATTORNEY/CLIENT RIGHTS SHOULD BE UPHELD

The Florida Bar makes the barren assertion that the attorney-client privilege does not apply herein because Linda Serbin, without the knowledge of the Petitioner, was unsworn and on the telephone on January 20, 1998. as noted above the undersigned did not know until August 12, 1998 that Linda Serbin was on the telephone at the January 20, 1998 hearing. **This Court should note that the Florida Bar had so little confidence that they went out and got Linda's sworn statement on June 6, 1998, two days before the first status hearing in this case.**

Contrary to the Florida Bar's position, this Court should allow the attorney/client issue as a legitimate response in the case at bar to the complaint of Jon Serbin. The Attorney/client privilege was intact in this matter until the undersigned learned for the first time on **June 10, 1998** that on the preceding Saturday, June 6, 1998 that Linda Serbin had made a sworn written complaint against the undersigned.[4]

The defense of the attorney/client privilege against the complaint of Jon Serbin, an adverse party, was legitimate and the ethically correct position,

---

[1] As noted in the Petitioner's initial brief, he did not know until **August 12, 1998**, when Gregg Wenzel provided a copy of the February 20th transcript, that Linda Serbin had been unsworn, on the telephone on January 20, 1998 at the Grievance hearing.

instead of running to protect my own interests. Indeed, the Florida Bar itself has recommended in the Ethical Opinion cited in the Petitioner's initial brief and attached hereto at **A2** pp. 29-31, that the undersigned should do exactly what he has done in this cause: RESIST AND APPEAL any attempt by even the IRS to obtain records, which would violate attorney/client confidences. **Ethical Opinion** 92-5 (December 7, 1993). In **Sepler v. Sepler**, 191 So.2d 588 (Fla. 3d DCA 1966) cited by the Florida Bar in its Answer Brief, the Court did not follow the *public interest* argument made by the Florida Bar in its Brief. Instead, the Court held, 191 So.2d at 591 that the attorney/client confidences should be upheld, where as in the case at bar, the client may be prosecuted. In the commentaries to Section 90.52, it is specially noted that the privilege attaches even where employment does not result. Sec. 90.502 Fla. Stat Commentaries **citing, Keir v. State**, 152 Fla. 389, at 394, 11 So.2d 888 (1943). Furthermore, where the privilege has been asserted, all proceedings in review of the disputed matters should be conducted **in camera**. **Del Carmen Calzon v. Capital Bank**, 689 So.2d 279, at 281 (Fla. 3d DCA 1995); **Gross v. Security Trust Co.**, 462 So.2d 580 (Fla. 4th DCA 1985); **Insurance Co. v. Noya**, 462 So.2d 580 (Fla. 5th DCA 1981).

In the present cause, for more than three (3) years the undersigned has raised the attorney/client privilege and nobody below has considered or allowed for an **in camera** proceeding, even when the undersigned repeatedly insisted that the proceeding had to be **in camera** regarding the production of Linda

Serbin's documents. **E.g., Petitioner's Brief**, at p.17 (the Agreement); **A25-A36** (Verified Motion to Vacate and for Rehearing; Verified Statement of Good Cause). Under the foregoing authority, this was plainly reversible error.

Similarly, if the undersigned had been allowed to appear and defend this cause at the hearing on January 20, 1998 he would have been able to present the defense to the Jon Serbin complaint and complete exoneration, without the impediment of the attorney/client defense. This case would have been over on **February 15, 1998** as suggested in the Petitioner's letter of January 17, 1998. We are in this position, because in 1996 Linda Evans of the Florida Bar failed to get the complaint of Linda Serbin; and because the 11th Circuit Grievance Committee proceeded when it should not have. Under the foregoing authority, this Court should therefore sustain the complaints of the Petitioner herein and vacate the present finding of non-compliance.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,484

Bar Case 97,70,300(11I)

THE FLORIDA BAR, by and through the complaint of Jon Serbin,
Complainant

vs.

CALVIN DAVID FOX,
Respondent.
_____/

MOTION FOR REHEARING; MOTION TO PRESENT ARGUMENT AND DOCUMENT IN CAMERA; MOTION FOR STAY PENDING REVIEW

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Motion for Rehearing and Motion for Stay Pending Review by the United States Supreme Court and as grounds therefore shows:

1.) That the undersigned is in receipt of this court's form order dated November 24, 1999 in which the Court has approved the recommendation of the Referee.

I. MOTION TO DISQUALIFY

2.) That this Court has overlooked or failed to consider that the Referee was the political opponent of the undersigned and that the undersigned filed formal requests with both the Governor of Florida and this Court to have the appointment of the Referee to the judicial position he presently holds set aside.

3.) That this Court has overlooked and failed to consider that the Respondent filed a timely and material Motion to Disqualify the Referee.

4.) That this Court has overlooked and failed to consider that in this proceeding under the Florida Bar's Rules governing ethical considerations, that the Referee had a patent conflict of interest in proceeding in this cause, which the Referee was wholly aware of at all times and at a minimum the Referee should have recused himself and the Respondents' Motion to Disqualify should have been granted.

II. DENIAL OF FUNDAMENTAL DUE PROCESS

5.) That this Court has overlooked and failed to consider that the undersigned has been denied fundamental due process under the federal and state constitutions, where the undersigned has an absolute defense to the complaint of the estranged criminal husband, Jon Serbin, where the client of the undersigned, Linda Serbin, had made a written agreement with the undersigned for attorneys fees and where the undersigned has never been afforded any opportunity to defend the complaint of Jon Serbin by presenting said attorney's fees agreement, where Linda Serbin has never made a complaint against the undersigned during the pendency of this cause before the Grievance Committee prior to January 20, 1998.

6.) That this Court has overlooked and failed to consider that the undersigned has been denied fundamental due process under the federal and state constitutions, where if the undersigned had been allowed to appear and defend

this cause at the hearing on January 20, 1998, he would have been able to present the defense to the Jon Serbin complaint and be completely exonerated without the impediment of the attorney client privilege.

7.) that this Court has overlooked and failed to consider that the undersigned was denied fundamental due process under the federal and state constitutions in being denied his right to defend the complaint of the estranged criminal husband Jon Serbin, at the hearing on January 20, 1998, where the undersigned was prohibited from appearing and defending at said hearing because he was required to attend a trial in Seattle, Washington, under the conflict rules in effect in South Florida state and federal courts.

8.) That this Court has overlooked and failed to consider that the undersigned has been denied fundamental due process under the federal and state constitutions, where since October of 1996, when the undersigned first received the complaint of Jon Serbin, he has desired to cooperate and defend this cause, but has been uniformly prohibited from doing so because defending this cause would cause the undersigned to become a witness against his client and would subject his client to criminal and civil complaints and severe embarrassment in the community.

9.) That this Court has overlooked and failed to consider that the undersigned was unaware that the client of the undersigned had ever made any complaint in this cause until June 6, 1998, when on June 10, 1998, just prior to the first hearing before the Referee below, the Florida Bar finally cajoled,

coerced and prevailed upon Linda Serbin to sign a complaint.

10.) That this Court has overlooked and failed to consider that the undersigned has been denied fundamental due process under the federal and state constitutions, where this Court is proceeding upon a complaint by Linda Serbin, which the undersigned has never been allowed to defend.

III. ATTORNEY CLIENT PRIVILEGE

11.) That this Court has overlooked and failed to consider that the present complaint and reckless disregard by the Florida Bar of the sanctity of the attorney client privilege is contrary to Ethical Opinion 92-5 (December 7, 1993) in which attorneys are urged by the Florida Bar to resist and appeal any attempt by even the IRS to obtain records, which would violate attorney client confidences.

12.) That this Court has overlooked and failed to consider that the present action by the Florida Bar is in reckless disregard of the Attorney Client sanctity, which had not been waived by his client, Linda Serbin, at any time prior to the Grievance Committee on January 20, 1998.

13.) That this Court has overlooked and failed to consider that in **Sepler v. Sepler**, 191 So.2d 588 (Fla. 3d DCA 1966), relied upon by the Florida Bar herein, the Court held that attorney client confidences should be upheld, where as in the case at bar the client will be prosecuted if those confidences were exposed.

14.) That this Court has overlooked and failed to consider that the Florida Bar cannot by force, threats, coercion,

or subpoena, destroy fundamental rights and cause the undersigned to breach confidences of his client to force the undersigned into becoming an adversary of his client and a witness against his client, where his client has made no complaint against the undersigned prior to the January 20, 1998 hearing herein. **E.G., Swidler v. United States**, _____ U.S. _____, 118 S.Ct. 2081, __ L.Ed.2d _____ (1998) (attorney client privilege is broader than the Fifth Amendment protection and survives even beyond the grave); **UpJohn v. United States**, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) (attorney client privilege protects against the disclosure of any product of the attorney client communication including notes and memoranda).

15.) That this Court has overlooked and failed to consider that without the bar of the attorney client privilege herein the undersigned would have been able to and would have responded to the September 9, 1996 letter of the Florida Bar and the undersigned would have been exonerated and this file on the complaint of Jon Serbin would have been closed at that time.

IV. MOTION FOR AND IN CAMERA REQUEST

16.) That the foregoing paragraphs 1 to 15 are re-alleged herein **pro haec verba**.

17.) That this Court has overlooked and failed to consider that the Referee neglected and failed to conduct an **in camera** review of the proposed defense of this proceeding by the undersigned. Clearly, where the undersigned has requested to defend this matter against

an attorney client prohibition that defense should be examined **in camera** under for example, **Del Carmen Calzon v. Capital Bank**, 689 So.2d 279, at 281 (Fla. 3d DCA 1995).

18.) That the undersigned therefore specifically requests and move this Court herein to present additional documentation including the client contract with Linda Serbin **in camera**, which would include the written defense and hence complete exoneration to the complaint of Jon Serbin, which the undersigned should have been allowed to present to the Florida Bar in 1996 and to the Grievance Committee on January 20, 1998.

V. NO JURISDICTION

19.) That this Court has overlooked and failed to consider that the Referee exceeded any jurisdiction he had herein under rule 5-1.2(d) and ignored the Grievance Committee proceedings, which are the fundamental basis for jurisdiction in this Court.

20.) That this Court has overlooked and failed to consider that where the undersigned was denied fundamental due process before the Grievance Committee neither this Court nor the Referee have lawfully acquired jurisdiction herein.

21.) That this Court has overlooked and failed to consider that where the 17(I) Grievance Committee considered and failed to act upon an identical subpoena, the 11(I) Grievance Committee had no jurisdiction to proceed herein under this Court's opinion in **Mabie v. Garden Street Management**, 397 So.2d 920 (Fla. 1981).

VI. THIS COURT SHOULD CONSIDER THIS CAUSE IMPORTANT AND REQUIRE OTHER THAN A FORM ORDER

22.) That the undersigned realizes that this Court is now spending 33% of its time on attorney disciplinary matters and that this cause is more readily handled by a form order to comply.

23.) That this Court should give fair and due consideration to this cause in that this cause has important issues to the members of the Florida Bar and is personally important to the undersigned.

VII. MOTION FOR STAY PENDING REVIEW

24.) That the foregoing paragraphs 1 to 23 are re-alleged pro haec verba herein.

25.) That there are colorable claims herein, which are important under federal law involving fundamental due process and the attorney client privilege herein.

26.) That in the interests of fairness and due process this Court should grant a stay to allow the undersigned an opportunity to present his claims to the United States Supreme Court.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Respondent, CALVIN DAVID FOX, prays 1.) that this Court will grant rehearing; b.) that this Court will allow the undersigned to present documentation in camera; and c.) that this Court will grant a stay pending review in the U.S. Supreme Court.

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IN THE SUPREME COURT OF FLORIDA

Case No. 92,484

THE FLORIDA BAR,
Complaintant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

SUPPLEMENT TO MOTION FOR REHEARING, ETC.

COMES NOW, the Respondent, CALVIN DAVID FOX, by and through the undersigned counsel and submits this supplement to the Previously filed Motion for Rehearing, etc., to wit:

1.) That the Respondent has previously filed a timely Motion for Rehearing; Motion for Stay Pending Review and Motion for In Camera presentation to the Court.

2.) That in addition to said Motions and in supplement thereto the Respondent would also allege that the form order of this Court dated November 24, 1999, is unlawful and denies fundamental due process in that:

a.) That the order purports to summarily override Rules 9.300(b) and 9.340(b) Florida Rules of Appellate procedure, without any lawful authority to do so, but rather only because of the status of the undersigned as an attorney;

b.) That the summary order of this Court overriding Rules 9.300(b) and 9340(b) is an unconstitutional denial of fundamental due process, equal protection

and access to the Courts under the federal and state constitutions;

c.) That the practice of this Court in entering orders which purport to override Rules 9.300(b) and 9.340(b) in cases involving attorneys is an unconstitutional usurpation of power by this Court where said rules as enacted by the Court do not provide any provision for such authority as for example by stating, *except as otherwise ordered by the Court*.

d.) That attorneys and axe murders like all litigants before this Court are entitled to be allowed equal protection under the federal and state constitution and the procedural and substantive due process afforded by Rules 9.300(b) and 9.340(b), which this Court has not afforded in the present circumstance.

e.) That this is the first appearance of this cause before the Court and there are no allegations of any emergency nor exigent circumstances herein, as for example a death warrant, which would require the extraordinary process of disregarding the equal protections and due process rights of the undersigned to be disregarded just because he is an attorney.

WHEREFORE, upon the foregoing and the pending motions before this Court such other terms as this Court deems just, the Respondent prays that this Court will a.) grant rehearing; b.) strike the present form order; c.) allow the undersigned to present documentation in camera; and d.) that this Court will allow a stay pending review in the United States Supreme Court.

IN THE SUPREME COURT OF FLORIDA

Case No. 92,484

THE FLORIDA BAR,
Complaintant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

MOTION FOR PROTECTIVE ORDER

COMES NOW, the Respondent, CALVIN DAVID FOX, by and through the undersigned counsel and submits THIS Motion for Protective Order and other plenary relief, to wit:

1.) That the present cause is pending before this Court upon a Motion for Rehearing; Motion for a Stay; Motion for In Camera Evidence; and a Supplement to said motions.

2.) That the undersigned is in receipt of the attached Notice of hearing by counsel for the Petitioner, in which the Petitioner purports to proceed upon this matter on February 29, 2000, while it is still pending before this court and is not final.

3.) That the history of this cause is recited in the attached letter of July 20, 1998 from the Respondent to Gregg Wenzel and the accompanying letter of 24, 1998 to John Boggs.

4.) That in particular, this cause arises from an **September 4, 1996** complaint by Jon Serbin, the estranged husband of Linda Serbin, who was the **only** client of the undersigned at all times

relevant to the claim of Jon Serbin. Jon Serbin complained for the first time in **September 1996** about a transaction on **Juley 6, 1993** in **First National Bank v. Linda Serbin**, 11th Cir. Case 92-13147-CA-24.

5.) That the response of the undersigned since **October 20, 1996**, when the Bar asked for a response herein has always been **first**, that Jon Serbin was not ever the client of the undersigned and that the only person who was the client of the undersigned was Linda Serbin; **secondly**, that Linda Serbin has never made any complaint against the undersigned, but to the contrary specifically told the undersigned and then the Florida Bar's investigator that she does not wish to make any complaint; **thirdly**, that in order to defend himself [and he has an absolute defense to this cause], the undersigned would be required to violate the attorney client privilege and disclose matters, which would cause him to be a witness against Linda Serbin in criminal and civil matters in both state and federal proceedings; and **finally** the disclosures which the undersigned would be required to make in order to defend himself, would cause the undersigned to be a material witness against Linda Serbin in the dissolution of the marriage with Jon Serbin, which was one the very subjects, upon which Linda Serbin had consulted with the undersigned.

6.) That on **June 6, 1998** almost five (5) months **after** this matter had been referred to this Court after an aborted hearing upon **only** the complaint of Jon Serbin and **five years (5)** after the alleged breach complained of, the

Florida Bar and Jon Serbin, harassed, cajoled, intimidated and forced Linda Serbin into making a written complaint against the undersigned.

7.) that as reflected in the attached Notice Bar is now trying to piggy back the **June 6, 1998** complaint of Linda Serbin herein upon the **September 4, 1996** complaint of Jon Serbin on the merits for the February 29, 2000 hearing.

8.) That the Florida Bar is unlawfully attempting to usurp the jurisdiction of this Court in a matter pending before this Court and upon which the Court has not relinquished jurisdiction.

9.) that the Grievance Committee has no jurisdiction in this cause and should be held in contempt if they attempt to assert jurisdiction.

10.) That the Florida Bar is attempting to unlawfully circumvent the pending motions before this Court and any U.S. Supreme Court jurisdiction herein by forcing the undersigned to defend the complaint of Linda Serbin on the merits, before this Court has ruled upon the foregoing motions pending before this court and before the U.S. Supreme Court has had an opportunity to consider this cause.

11.) That the complaint of Linda Serbin, which was provided to the undersigned on or about **June 6, 1998** for the first time **five years** after the event complained of its stale and time-barred by the limitations period for such claims.

WHEREFORE, upon the foregoing and the pending motions before this court

such other terms as this Court deems just, the Respondent prays that this Court will protect against the presently scheduled hearing on the complaint of Jon Serbin upon pain of contempt and that this Court will further bar the presentation of the complaint of Linda Serbin; and furthermore that this Court upon the motions presently pending before the Court will, a.) grant rehearing; b.) strike the present form order; c.) allow the undersigned to present documentation in camera; and d.) that this Court will allow a stay pending review in the U.S. Supreme Court.

LAW OFFICES of
CALVIN DAVID FOX
PO Box 5286
Fort Lauderdale, Florida 33310
(305) 839-5035

CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

SUPREME COURT OF FLORIDA

TUESDAY, FEBRUARY 22, 2000

CASE NO.: SC 92484
Lower Tribunal No.: 97-70,300(11I)

THE FLORIDA BAR vs. CALVIN D. FOX

Petitioner(s)

Respondent's Motion for Rehearing; Motion to Present Argument and Document in Camera; and Motion for stay Pending Review are hereby denied.

HARDING, C.J., SHAW, WELLS, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

A True Copy
Test:

_____

Debbie Causseaux
Acting Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA
(Before a grievance Committee)

In Re: A disciplinary matter conducted under authority of the Rules Regulating The Florida Bar.

The Florida Bar File
No. 97-70,300(11I)

Notice of Hearing Before a Grievance Committee

TO: Calvin David Fox
PO Box 5286
Fort Lauderdale, FL 33310-5286

Jon & Linda Serbin
11111 Biscayne Blvd
Apt 401
Miami, FL 33181-3404

DATE: Tuesday, February 29, 2000
TIME: 5:30 p.m.
PLACE: Office of The Florida Bar, 444 Brickell Avenue, Suite M-100, Rivergate Plaza, Miami, Florida.

SUBJECT: Complaint of Jon Serbin against Calvin David Fox

Possible violation of rules 4-1.15, 4-1.4, 4-8.4 of the Rules of Professional Conduct and Rule 5-1.2 of the Rules Regulating Trust Accounts.

You will please take notice that the undersigned Grievance Committee will sit at the time and place mentioned for the purpose of investigating the alleged misconduct stated above. Rule 3-7.4(g) and (h) and 3-7.11(d)(5), as well as portions of Rule 3-7.1 of the Rules of

Discipline are printed on page two (2), for your further notice.

You are requested to attend and give testimony. You are also requested to bring with you any and all documents and files in your possession pertaining to the above-captioned complaint.

Pursuant to the requirements of Rule 3-7.4(g), a list of the members of this grievance committee is printed on page two (2).

I **CERTIFY** that the original of the foregoing notice was sent to Calvin David Fox, Respondent, certified mail (Z378 232 649) return receipt requested and a copy was sent to Complainant, via certified mail (Z 378 232 650) return receipt requested on this 2nd day of February, 2000.

Eleventh Judicial Circuit
Grievance Committee I

By: Gregg Wenzel for the Committee

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
Miami, Florida 33245

(305) 854-1037

November 23, 1992

Linda Serbin
6475 Pine Tree Drive Circle
Miami Beach, Florida 33141

RE: **Contract for Legal Services**

Dear Linda:

This will confirm our agreement to the following as our contract for legal services. Although I love you deeply, our personal life together must be put on hold. In particular, Jon could use our love making as a weapon in all of the matters against him, especially your divorce.

FIRST NATIONAL BANK V. JON SERBIN and LINDA SERBIN
11TH Cir. Case 92-13147-CA-24

This will confirm that I will appear in this cause as your attorney and attempt to set aside and stall the stipulation to foreclosure, which Jon Serbin; his attorney, Ira Gordon; and the Bank's attorney have coerced you into signing.

There is an acute conflict of interest in this and other matters in this agreement and therefore I will not be representing Jon and attorney Ira

Gordon will continue to represent Jon. In particular, I trust that you have not disclosed your affair with me to Ira.

This will be an extraordinarily difficult undertaking. We will likely be only able to delay this matter for up to six months in order to obtain a willing buyer such that you will not be required to sell your house at a firesale price on the Courthouse steps. This will confirm that we will endeavor to sell the house at or near the tax assessor's valuation of about $500,000.

We have agreed that my total fees for this representation which would include the present litigation and any subsequent and related litigation; and is unrelated to the success or outcome or our ability to obtain the foregoing value of $500,000 for the house, will be a flat, non-refundable fully earned fee of $25,000, which will be paid as you are able.

LINDA SERBIN v. JON SERBIN

This will confirm that you have consulted with me regarding a contested dissolution proceeding from Jon Serbin, who lives with you and your daughter, Bess Serbin at the above referenced address. The central reason for consulting with me for divorce arise from Jon's beating and rape of your daughter, Bess Serbin, since she was about nine (9) years old.

I have confirmed that Bess has attempted suicide several times; is prone to severe episodes of self-mutilation and has undergone several years of psychiatric care, which is reported in

her pending litigation in **Bess Serbin v. Doral**, 11th Cir. Case 91-57930-CA-15, which is discussed below.

This will confirm that I have urged you to allow me to present this matter to the State Attorney, which you have so far declined to do. I understand that the beatings and rapes of Bess by Jon and Jon's severe alcoholism have been the subject of several meetings with his family. I can understand your extreme reluctance to allow this matter to become public knowledge, but it is a severe offense and Bess' life has been ruined and she may yet kill herself. She has confirmed these beatings and rapes to me and has indicated that Jon threatens to resume them, despite all the locks on Bess' bedroom door. **You must do something to stop this or allow me to proceed.**

In addition to the foregoing, this will confirm that for about five (5) years you have been living and supporting both Jon and the house with your trust funds from your family. Jon has bled off moneys and assets from his Company, Serbin Fashions, which is in bankruptcy in **In re Serbin Fashions**, U.S. Southern District of Florida Bankr. Case 91-11699-BKC.

Based upon the foregoing and our discussions, I feel confident that you should remain in control of the remaining assets of the marriage, which principally consist of the house and its contents. You must pursue the allegations of the rape and beating of Bess Serbin. If the sickness and violence of Jon Serbin is

not disclosed, his sickness and his alcoholism will remain your burden.

Finally, you must not disclose our long term and intimate relationship to Jon directly or indirectly. He would use those allegations as a weapon in your dissolution proceedings and to add me as a witness against you.

IN RE: SERBIN FASHIONS, INC.
U.S. Southern District of Fla.
Case 91-11699 BKC

This case was filed on April 18,1991 and involves the bankruptcy of Jon Serbin's business, Serbin Fashions. This does not yet involve you personally, except that you have supported the house and Jon because of his waste of the Company and its assets.

However, you have confirmed that Jon has lied under oath in this case; and you were aware of this at the time, as to the existence of and locations of assets and cash from Serbin Fashions to the Trustee and to attorneys for the Creditors.

You have similarly lied to the Trustee and/or the attorneys. You must not lie to anyone any further. It is a criminal act prosecuted by the U.S. Attorney. We may be able to urge your alcoholism and the threats of violence and coercion by Jon as a defense.

Additionally, if you are contacted any further in this matter you will refer all further inquiries to me. We will have to arrange the fees and costs of that proceeding as it occurs.

BESS SERBIN v. DORAL EQUESTRIAN CENTER
11th Cir. Case 91-57930

I have reviewed this matter with Bess and I have read the Court file. Malcolm Fromberg her present attorney has botched this case and the settlement, which he has demanded Bess accept is greatly less than the case may be worth with a more aggressive attorney.

I have recommended referring this cause to enable me to work with Carlos Del Amo at the High, Stack firm to get Bess a much better result, which may include pushing the case to trial. Bess is enthusiastic about proceeding with this strategy. Malcolm has really beaten her up psychologically and worn her down to accept the pathetic settlement he has obtained.

The defense has been rattling its sword about using Bess' psychiatric records and the rapes and beatings by Jon as an intervening cause for her injuries. I think that such a strategy would blow up on the defense before a sympathetic jury.

My fees for this work will not cost you or Bess anything more. The High, Stack firm will pay my fees as a referral fee out of any proceeds obtained before or after judgment. Their separate agreement with Bess, includes me and all costs.

In consideration of these agreements, I will also continue to represent you and Bess in all those other piddling legal matters, which seem to crop up.

I hope that you understand how I feel, but we can no longer act upon these feelings if I am to make these efforts on behalf of you and Bess. Instead, we must adhere to this formal arrangement.

Finally, I would again urge you to allow me to proceed against Jon as to the rapes and beatings of Bess. It is the one matter, which will enable you to recover your life again and to perhaps save your daughter. Please.

Very truly yours,

CALVIN DAVID FOX, Esq
Fla. Bar No. 192098

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
Miami, Florida 33245

(305) 854-1037

August 4, 1993

Linda Serbin
9241 Collins Avenue
Apartment 7
Surfside, Florida 33154

RE: **First National Bank v. Serbin**
11th Cir. Case 92-13147-CA-24

Dear Linda:

This will constitute my closing statement for the above referenced litigation.

This will confirm my receipt based upon our agreement to the sum of $25,000 as my earned legal fees on or about June 10, 1993.

This will also confirm that on June 15, 1993, before the closing you asked me to reduce my fees and to remit $5,000 of my fees to assist you with moving. I agreed and you have received $5,000 back from me.

The closing balance in this matter after my fees and the rebate to you in this matter as of this date is therefore zero dollars.

I hope that everything is going well. At least we got more funds from the house than you ever thought possible.

Very truly yours,
CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

THE FLORIDA BAR
Grievance Committee for the
Eleventh Judicial Circuit

REPLY TO: Thomas M. Karr, Chair
Grievance Committee 11I
200 So. Biscayne Blvd,Suite 4
Miami, Florida 33131

March 20, 2000

John & Linda Serbin
1111 Biscayne Boulevard Apt. 401
Miami, Florida 33181-3404

RE:Complaint against Calvin D. Fox
The Florida Bar File No. 97-70,3000 (11I)

Dear Mr. & Mrs. Serbin:

You are advised that the above-reference matter has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because:

There is insufficient evidence to support your allegation that the respondent improperly disbursed funds from his trust account.

Please be advised that our action does not preclude you from consulting with private counsel, nor does it preclude you from exercising any legal or equitable remedies which may be available to you.

Accordingly, we wish to advise you that we are closing our file in this matter.

Sincerely,THOMAS M. KARR, Chair
Grievance Committee 11 I
cc: Calvin D. Fox

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,

v.

CALVIN D. FOX,
Respondent.
_____/

THE FLORIDA BAR FILE
No. 97-70,300
(11I)

REPORT OF NO PROBABLE CAUSE

The eleventh Judicial Circuit Grievance Committee I found No Probable Cause in the above-referenced matter.

Pursuant to the provisions of Rule 3-7.4(j) of the Rules Regulating The Florida Bar, the undersigned, by signature, signifies a finding of No Probable Cause by the Grievance Committee as to the referenced complaint.

Dated this 14th day of March, 2000.

THOMAS M. KARR, Chair
Eleventh Judicial Circuit
Grievance Committee I

cc: Arlene Kalish Saankel, Branch Staff Counsel
Calvin D. Fox, Respondent,
Jon & Linda Serbin Complainants.

CALVIN DAVID FOX

MAILING ADDRESS: Post Office Box 5286
Ft Laud. FL 33310

I. **PROFESSIONAL:**

Aug. 1999 to date: Registered Representative National Association of Securities Dealers and New York Stock Exchange; Financial Advisor.

Member: Florida Bar; Broward Bar Association; formerly American Bar Association; Chairman ABA Appellate Issues Committee; Florida Bar's President's Committee on Professional Ethics; Florida Bar Corrections Committee on Inmates Projects.

Member: United States Supreme Court; United States Eleventh, Ninth and Fifth Circuit Courts of Appeal; United States District Courts for the Northern, Middle and Southern Districts of Florida (Trial Bar); Eastern District of California; Northern District of Indiana; and Northern District of Illinois.

II. **PREVIOUS WORK EXPERIENCE:**

1.) May 1994 to March 1999: 5 years.
GENERAL COUNSEL
Tutor Time Learning Systems/Tutor Time Child Care Systems
621 NW 53rd Street, Suite 450
Boca Raton, Florida 33487

2.) November 1989 to September 1992:
MANAGING PARTNER
Tauler & Fox, P.A.
800 Douglas Road, Suite 170
Coral Gables, Florida 33134

3.) December 1987 to November 1989:
MANAGING PARTNER
Vernis & Bowling, P.A.
2398 South Dixie Highway
Miami, Florida 33133

4.) April 1978 to June 1987: 9 years.
ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
401 NW Second Avenue, Suite 820
Miami, Florida 33128

5.) March 1976 to April 1978: 9 years
ASSISTANT COUNTY ATTORNEY
Office of the County Attorney
73 West Flagler Street
Miami, Florida 33130

III. **EDUCATION:**

Law School: Tulane University School of Law, J.D., **with honors** 1974
Undergraduate: Tulane University, B.A. 1970.

Full Four year NCAA Football Scholarship;
National President, United States Air Force Officer Training Corp.;
Arnold Air Society; General Dynamics Outstanding Air Force Cadet;
NFL football prospect; Tulane University Assistant Football Coach.

IV. **SIGNIFICANT CONTINUING EDUCATION AND TRAINING:**

NASD Series 7 license (95th percentile); and State and Federal Series 63 and 65 licenses; Certified Mediator training; Certified Arbitrator training; Certified Dale Carnegie public speaking and Dale Carnegie Instructor; Medical Institute for Attorneys: 20 hours; Trial Advocacy and Appellate practice: 65 hours.

V. **MILITARY**:

First Lieutenant United States Air Force Judge Advocate Corp. and USAF reserve officer 1975 to 1980.

VI. **PUBLICATIONS AND WRITINGS**:

Capital Litigation,57 Fla.BarJournal 253; United States Supreme Court Briefs, Writs and Responses 32
U.S. 5th; 9th; and 11th Circuit Courts Briefs, Writs and Responses.....41
Florida Supreme Court Briefs, Writs and Responses.....135
Fla. 3rd 4th and 2d Appeal Briefs. . 600

Note: The foregoing also represent more than twenty-two oral arguments in the Florida Supreme Court and my seven (7) cases on the merits in the United States Supreme Court, including **Florida v. Royer** and **Strickland v.Washington**, which are taught in Law Schools.

VII. **COMMUNITY SERVICE**:

United Way Mental Health Funding panel; Juvenile Diabetes Foundation volunteer; Certified Scoutmaster and Cubmaster, Boy Scouts of America; Instructor: Drug Enforcement Administration; Coach: Optimist Children's Athletic Leagues; Dania Beach Volunteer Projects; Prudential Community Service.

VIII. **PERSONAL INTERESTS**:

Baseball, soccer, biking, camping at Fort Wilderness, Florida state parks and in the mountains of North Carolina and Tennessee with my little guys, Ernest age 8; Robert age 5; and Gabriel age 4.